रजिस्टर्ड नं० पी०/एस० एम० 14.

राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, 27 सितम्बर, 1936/5 आश्विन, 1908

हिमाचल प्रदेश सरकार

ELECTION DEPARTMENT

NOTIFICATION

Shimla-171002, *the 5th June,* 1986

No. 3-11/86-ELN.—The Election Commission of India's Notification No. 82/HP-LA/6/85, dated the 13th June, 1986,corresponding to Jyaistha 23, 1908(Saka) containing the Judgement dated the 8th May, 1986 of the High Court of Himachal Pradesh at Shimla, in Election Petition No. 6 of 1985, alongw ith its order dated the 16th August, 1985, referred to therein, is hereby published for general information.

By order,
ATTAR SINGH,
Chief Electoral Officer.

1713-राजपत्र/86-27-9-86—1,248.

मूल्य: 20 पैसे।

ELECTION COMMISSION OF INDIA

'Nirvachan Sadan'
Ashok Road,
New Delhi-110001.
13*th June*, 1986

Dated the, ——————
Jyaistha 23, 1908 (Saka)

NOTIFICATION

No. 82/HP-LA/6/85.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgement dated the 8th May, 1986 of the High Court of Himachal Pradesh at Shimla, in Election Petition No. 6 of 1985, along with its order dated 16th August, 1985 referred to therein.

भारत निर्वाचन आयोग

निर्वाचन सदन,
अशोक मार्ग,
नई दिल्ली-110001.
13 जून, 1986

तारीख——————
ज्येष्ठ 23, 1908(शक)

अधिसूचना

संख्या 82/हि0 प्र0-वि0 स0/6/85.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1985 की निर्वाचन अर्जी संख्या 6 में हिमाचल प्रदेश, उच्च न्यायालय, शिमला के तारीख 8 मई, 1986 का निर्णय उसमें संदर्भित उस के तारीख 16 अगस्त, 1985 के आदेश सहित एतद्द्वारा प्रकाशित करता है।

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

ELECTION PETITION NO. 6 OF 1985

Date of decision : May 8, 1986

Maheshwar Singh *Versus* Satya Parkash and others.

Coram:

The Hon'ble Mr. Justice : V.P. GUPTA, J.

Whether approved for reporting? Yes.

For the Appellant(s)/Petitioner(s) M/s R. P. Bansal, M. G. Chitkara and N.N. Agarwal, Advs.

For the Respondent(s) Shri Chhabil Dass, Advocate, for respondent No. 1.

V. P. GUPTA, J.

The petitioner (Shri Maheshwar Singh) has challenged the election of respondent No. 1 (Shri Satya Prakash Thakur) from 57-Banjar Assembly constituency of Himachal Pradesh Legislative Assembly, by filing the present election petition under sections 80, 81, 100, 101 of the Representation of People Act, 1951 (hereinafter the Act).

In pursuance to a notification dated 1-2-1985 issued by the Election Commission, elections to the Himachal Pradesh Legislative Assembly were held on 5-3-1985 and the following programme was issued:—

(1) Last date for filing of nominations	..	8-2-1985 (Friday)
(2) Date for scrutiny of nomination	..	9-2-1985 (Saturday)
(3) Last date for withdrawal	..	11-2-1985 (Monday)
(4) Date for polling, if necessary	..	5-3-1985 (Tuesday)
(5) Date before which election shall be completed	..	9-3-1985 (Saturday)

The petitioner was a Bhartiya Janata Party candidate while respondent No. 1 was a Congress (I) party candidate from 57-Banjar Assembly Constituency. Kurmi Ram (respondent No. 2) and Naval Thakur (respondent No. 3) also contested the election as Independent candidates. S/Shri Rupinder Singh, Bihari Lal, Dola Ram and Paras Ram had filed their nomination papers but they withdraw their candidature and did not contest the election.

Polling took place on 5-3-1985 while counting of votes was done on 7-3-1985 and the results were also declared on 7-3-1985. The returning officer orally declared respondent No. 1 as elected having secured 17502 votes. The petitioner secured 17118 votes, respondent No. 2 (34) votes) and respondent No.3(101 votes) respectively. According to this oral announcement of the returning officer, respondent No. 1 was securing 384 votes more than the petitioner. At the time of the preparation of the final result sheet, to be sent to the Election Commission, it was found that respondent No. 1 had secured 17383 votes while the Petitioner had secured 16816 votes. The respondents Nos. 2 and 3 were found to have secured 34 and 97 votes respectively. The difference of votes between the petitioner and respondent No. 1 was thus found to be 567 and not 384.

The petitioner has challenged the election of respondent No. 1 on several grounds such as:—

(*a*) That the result of the election as declared by the Returning Officer, is based on erroneous counting, counting of votes in favour of other candidates, which otherwise were liable to be rejected, treating votes duly marked in favour of the petitioner as in valid, and votes duly marked in favour of petitioner being counted in favour of other respondents, particularly respondent No. 1. Void votes were also received and counted. Sixteen tables were provided for counting votes of 108 polling stations in the constituency. The counting was concluded in seven rounds. The Returning Officer was biased against the petitioner, and he acted to help the respondent in the entire counting process. Votes clearly marked in favour of the petitioner were counted in favour of respondent No.1, by the counting staff, and when this fact was brought to the notice of the Returning Officer, he observed that he was not prepared to doubt the correctness of the acts of his supervisory and counting staff. No random check of at least 5% of the total votes was carried out and no checking was done inspite of the fact that several irregularities were brought to the notice of the Returning Officer. The Returning Officer refused to correct glaring mistakes of counting. 498 doubtful votes were placed before the Returning Officer for decision, out of which many votes had been cast in favour of the petitioner, but the Returning Officer rejected such votes or counted the same in favour of the respondent No. 1. Some of the votes counted in favour of respondent No. 1 were to be rejected and some of these votes were to be counted in favour of the petitioner. The result of the election was

being declared round-wise. In the fifth round it was declared that the petitioner was leading by 1465 votes and in the Sixth round, it was declared that the petitioner was leading by 566 votes. In the Seventh, that is, the last round, the Returning Officer declared respondent No. 1 successful by a margin of 384 votes. The petitioner approached the Returning Officer for a re-count, but his request for recount was rejected. The Returning Officer did not comply with the various rules, and specially rules 45, 56, 64 of the conduct of Election Rules, 1961 (hereinafter the Rules). The forms 16, 20, 21-C and 21-E were also not filled and completed in accordance with the Act and the rules, and there are several glaring mistakes and discrepancies in these forms. About 248 names of Jawans/employees of the Special Security Bureau Battalion Shamshi were shown as voters out of whom about 164 had been transferred before the polling date and one employee had died. The respondent No.1 got these votes cast by impersonation which votes were void. Respondent No. 1 also got a large number of other voters impersonated and when the real voters came to cast his/her vote then such votes were taken as tendered votes. Some instances of tendered votes are given in the petition. The votes cast by impersonation were required to be excluded from the results of the election at the time of counting and some instances of impersonation are narrated in the petition. It is alleged that tendered votes are not shown in Forms 16 and 20. The postal ballot papers were wrongly counted in favour of respondent No. 1 and a correct and true account of the postal ballot papers was not kept in accordance with the Act and the rules. Due to such illegalities and irregularities committed in the counting, it is necessary that a re-count of the votes be ordered.

(*b*) That respondent No. 1 committed corrupt practice of bribery under section 123 (1) of the Act by offering gifts and promising gratifications with an object of inducing the electors to vote for him and not to vote for the petitioner. Widowed, old-age and handicapped pensions were sanctioned to various voters, and the voters were informed that such pensions had been granted to them at the instance of respondent No. 1. It was also disclosed to the voters that respondent No. 1 would get pension sanctioned in their favour and these facts could be confirmed from Shri Nidhi Singh, Tehsil Welfare Officer, Kullu. The voters were also informed that in case respondent No. 1 was not declared successful, then the pension granted in their favour shall be withdrawn. Several members of the Co-operative Societies were also informed that the Co-operative Societies would be getting maximum financial aid in case respondent No. 1 was found to be successful in the elections. Similarly, under the Voluntary Teachers Scheme several persons were appointed to secure the votes for respondent No. 1. The giving of jobs to such persons was, in fact, illegal gratification, and respondent No. 1 had indulged in the acts of bribery as defined under section 123 (2) of the Act.

(*c*) The respondent No. 1 had also committed the corrupt practice of undue influence under section 123 (2) (*a*) (*ii*) of the Act. He got posters Ex. P-16 and P-17 printed and distributed to the voters. Shri Tej Ram, an uncle of the respondent No. 1, got printed the posters with the caption "RUPI SARAJ-AIK AWAJ" and "TAAJA KHABAR". and such posters were published and distributed by respondent No. 1 and other persons acting with the consent of respondent No. 1. The posters were circulated and distributed in the entire constituency from February 28, 1985 to March 5, 1985. The subject in the posters clearly gives a command to the voters to vote for respondent No. 1 and in case of their not voting in favour of respondent No. 1, they (voters) would be incurring the displeasure of the Devta (deity). The statements of facts given in these posters were reasonably calculated to prejudice the prospects of the election of the petitioner in relation to his personal character and conduct which were false and were not believed to be true by respondent No. 1 and his agents acting with his consent. In these posters it was mentioned that the deity had predicted darkness in the success of the petitioner.

The deity Shringa Rishi, about whom a reference has been made in these posters is considered to be the chief deity in Kullu, and the people of the constituency were mostly illiterate, religious minded, having deep and blind faith in the local gods and goddesses. By publishing and distributing Ex. P-16 and P-17, in fact threats were given to the voters to vote for respondent No. 1 so that they might not incur the displeasure of the deity. The peoms of these posters were read out in a public meeting on February 28, 1985 at Banjar by Thakur Tej Ram. This meeting being an election meeting was also addressed by the Chief Minister and others in which respondent No. 1 was present.

(*d*) The respondent No. 1 published another poster Ex. P-18, in which he attacked the personal character and conduct of the petitioner by calling the petitioner as a thief of goats (BAKRA CHOR). In Ex. P-18, the word 'Devlu', refers to the petitioner and such posters were published and distributed to the voters, and thus the respondent No. 1 has committed a corrupt practice.

(*e*) The respondent No. 1 hired and procured vehicles for the free conveyance of the voters on March 5, 1985. The voters were carried in these vehicles free of charge by respondent No. 1 or his supporters.

(*f*) The respondent No. 1 obtained and procured the assistance of Shri Nidhi Singh, Tehsil Welfare Officer and a Government servant, for furtherance of his election prospects. Similarly, Bishan Chand, Sub-Inspector and Pyare Lal Forest Guard, government officials, also worked for respondent No.1 during the elections. The respondent No. 1 thus committed a corrupt practice under section 123 (7) of the Act.

(*g*) Due to the corrupt practices committed in the interest of and with a view to help respondent No. 1 and by his workers and agents, with his consent and also the various illegalities and irregularities committed in the election, the result of the elction so far as it concerns respondent No. 1 has been materially effected.

The petitioner claims that the election of respondent No. 1 be set aside and the petitioner be declared duly elected in place of respondent No. 1 as a Member of the Legislative Assembly. He also prays for issuance of necessary directions/orders as may be found to be appropriate in the facts and circumstances of the case.

The petition is con tested by respondent No. 1 who has denied the various allegations. Respondent No. 1 also raised some preliminary objections. Replication was filed by the petitioner, and in the replication the petitioner reasserted the various allegations made in the petition.

Respondent No. 2 filed a separate written statement in which he has supported the petitioner. Respondent No. 3 was proceeded *ex-parte*.

Upon the pleadings of the parties the following three issues were framed on 7-6-1985 as preliminary issues:—

1. Whether the petition does not contain a concise statement of the material facts constituting either the violation of the rules or the Act or of committing corrupt practices as alleged in para 1 of the preliminary objections? If so with what effect. OPR-1.
2. Whether the petitioner has not set forth full particulars of corrupt practices as alleged in para 1 of the preliminary objections? If so with what effect? OPR-1.
3. Whether the petition does not disclose a complete cause of action as alleged in para 2 of the preliminary objections? If so with what effect? OPR-1.

All these issues were decided against respondent No. 1 vide my separate order dated August 16, 1985. Thereafter the following issues on merits were framed on 12-9-1985:—

1. Whether the result of the election, so far as it concerns respondent No. 1, has been materially affected by improper reception, refusal or rejection of any vote or the reception of

any vote which is void and by any non-compliance of the provisions of the Constitution or of the Representation of People Act or of any rules or orders made under the Representation of People Act as alleged in paras 5, 7 to 13, 17, 18, 20 to 22 and 53 of the election petition? OPP,

2. Whether any corrupt practice, that is, bribery was committed by respondent No. 1 or his agent or by any other person with the consent of respondent No. 1 or his election agent, as alleged in paras nos. 35 to 39, 41, 44 to 48 of the election petition? OPP.
3. Whether any corrupt practice, that is undue influence, was committed by respondent No. 1 or his agent or by any other person with the consent of respondent No. 1 or his election agent, as alleged in para 26, 37, 41 and 45 to 48 of the election petition? OPP.
4. Whether any corrupt practice by publication as stated in section 123 (4) of the Representation of People Act was committed by respondent No. 1 or his agent or by any other person with the consent of respondent No. 1 or his election agent as alleged in paras 26, 27 and 29 of the election petition ? OPP.
5. Whether any corrupt practice for hiring or procuring of vehicles as mentioned in section 123 (5) of the Representation of People Act, was committed by respondent No. 1 or his agent or by any other person with the consent of respondent No. 1 or his election agent as alleged in paras 30 to 33 of the election petition? OPP.
6. Whether any corrupt practice as stated in section 123 (7) of the Representation of People Act, was committed by respondent No. 1 as alleged in paras 14 to 20, 34, 36, 39, 41, 43 to 45 of the election Petition? OPP.
7. Whether the result of the election has been materially affected as alleged in the election petition? OPP.
8. Relief.

Parties produced evidence on the various issues and I have heard the arguments of the learned counsel for the parties and have perused the records. My findings on the various issues are as follows:

Issue No. 1:

The learned counsel for the petitioner contended that many doubtful votes were wrongly counted in favour of respondent No. 1 and similarly many votes cast in favour of the petitioner were counted in favour of respondent No. 1 or were rejected. The returning officer did not follow the procedure laid in the rules and the various instructions of hand book meant for the returning officers. The contention was that the results were announced by the returning officer round-wise. In the 5th round the petitioner was leading by 1465 votes and in the 6th round by 566 votes. The result sheets, however, do not show the aforesaid leads of the petitioner. It was contended that the result sheets were tampered with by the returning officer who was posted as Deputy Commissioner, Kullu on 21-1-1985 with a view to show undue favour to respondent No. 1. The original records showing the leads in the 5th and 6th rounds as announced by the returning officer were withheld and the present records were patently false. It was contended that Forms 16 and 20 were not completed and filled in accordance with the rules and instructions. In view of the various illegalities and irregularities, a recount was necessary and a *prima facie* case for recount of the ballot papers was made out by the petitioner.

The learned counsel for respondent No. 1 contended that the recount was totally unnecessary in the present case and the counting was done according to the rules and procedure. The instructions given in the hand book for the returning officer were duly followed. The allegations in the petition were vague and indefinite and related to a period upto 7-3-1985. No illegality or irregularity was comitted during the elections or the counting of the votes and only clerical mistakes of totalling were corrected in the final result sheets after 7th of March, 1985. Forms No. 16 and 20 were rightly prepared and the declaration of results at the close of the 5th and 6th rounds was due to a clerical mistake in calculations only. It was contended that no case for inspection, scrutiny or recount was made out and the result of the election so far as it concerns respondent No. 1 has not been materially affected.

I have considered the contentions and have perused the records.

The relevant portion of section 100 of the Act reads as follows:—

"100. Grounds for declaring election to be void.—(1) Subject to the provisions of sub-section (2) if the High Court is of opinion:

(*a*) to (c) x x x x

(*d*) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(*i*) x x x x

(*ii*) x x x x

(*iii*) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(*iv*) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) x x x x x x x x"

Rule 45 of the rules reads as follows:—

"45. *Account of ballot papers.*—(1) The presiding officer shall at the close of the poll prepare a ballot paper account in Form 16 and enclose it in a separate cover with the words "Ballot Paper Account" superscribed thereon.

(2) The presiding officer shall furnish to every polling agent present at the close of the poll a true copy of the entries made in the ballot paper account after obtaining a receipt from the said polling agent therefor and shall also attest it as a true copy."

Rule 56 of the rules reads as follows:—

"56. *Counting of votes.*—(1) The ballot papers taken out of each ballot box shall be arranged in convenient bundles and scrutinised.

(2) The returning officer shall reject a ballot paper—

(*a*) if it bears any mark or writing by which the elector can be identified, or

(*b*) if it bears no mark at all or, to indicate the vote, it bears a mark elsewhere than on or near the symbol of one of the candidates on the face of the ballot paper or, it bears a mark made otherwise than with the instrument supplied for the purpose, or

(*c*) if votes are given on it in favour of more than one candidate, or

(*d*) if the mark indicating the vote thereon is placed in such manner as to make it doubtful to which candidate the vote has been given, or

(*e*) if it is a spurious ballot paper, or

(*f*) it if it so damaged or mutilated that its identity as a genuine ballot paper cannot be established, or

(*g*) if it bears a serial number, or is of a design, different from the serial numbers, or, as the case may be, design, of the ballot papers authorised for use at the particular polling station, or

(*h*) if it does not bear both the mark and the signature which it should have borne under the provisions of sub-rule (1) of rule 38:

Provided that where the returning officer is satisfied that any such defect as is mentioned in clause(*g*) or clause (*h*) has been caused by any mistake or failure on the part of a presiding officer or polling officer, the ballot paper shall not be rejected merely on the ground of such defect:

Provided further that a ballot paper shall not be rejected merely on the ground that the paper mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular cadidate clearly appears from the way the is marked.

(3) Before rejecting any ballot paper under sub-rule (2), the returning officer shall allow each counting agent present a reasonable opportunity to inspect the ballot paper but shall not allow him to handle it or any other ballot paper.

(4) The returning officer shall endorse on every ballot paper which he rejects the word "Rejected" and the grounds of rejection in abbreviated form either in his own hand or by means of a rubber stamp and shall initial such endorsement.

(5) All ballot papers rejected under this rule shall be bundled together.

(6) Every ballot paper which is not rejected under this rule shall be counted as one valid vote:

Provided that no cover containing tendered ballot papers shall be opened and no such paper shall be counted.

(7) After the counting of ballot papers contained in all the ballot boxes used at a polling station has been completed:—

(*a*) the counting supervisor shall fill in and sign Part-II-Result of Counting, in Form 16, which shall also be signed by the returning officer; and

(*b*) the returning officer shall make the entries in a result sheet in Form 20 and announce the particulars."

Rule 63 of the rules reads as follows:

"63. *Re-count of votes.*—(1) After the completion of the counting, the returning officer shall record in the result sheet in Form 20 the total number of votes polled by each candidate and announce the same.

(2) After such announcement has been made, a candidate or, in his absence, his election agent or any of his counting agents may apply in writing to the returning officer to re-count the votes either wholly or in part stating the grounds on which he demands such re-count.

(3) On such an application being made the returning officer shall decide the matter and may allow the application in whole or in part or may reject in toto if it appears to him to be frivolous or unreasonable.

(4) Every decision of the returning officer under sub-rule (3) shall be in writing and contain the reasons therefor.

(5) If the returning officer decided under sub-rule (3) to allow a re-count of the votes either wholly or in part, he shall—

(*a*) do the re-counting in accordance with rule 54A, rule 56 or rule 56A, as the case may be;

(*b*) amend the result sheet in Form 20 to the extent necessary after such re-court; and

(*c*) Announce the amendments so made by him.

(6) After the total number of votes polled by each candidate has been announced under sub-rule (1) or sub-rule (5), the returning officer shall complete and sign the result sheet in Form 20 and no application for a re-count shall be entertained thereafter:

Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (2)."

Rule 64 of the rules reads as follows:—

"64. *Declaration of result of election and return of election.*—The returning officer of shall, subject to the provisions of section 65 if and so far as they apply to any particular case, then—

(*a*) declare in form 21C or Form 21D, as may be appropriate, the candidate to whom the largest number of valid votes has been given, to be elected under section 66 and send

signed copies thereof to the appropriate authority, the Election Commission and the Chief Electoral Officer; and

(*b*) complete and certify the return of election in Form 21E and send signed copies thereof to the Election Commission and the Chief Electoral Officer."

The petitioner (PW 2) and Subedar Piara Singh (PW16) state that the decision regarding the validity or invalidity of the doubtful/contested votes was taken by the returning officer himself. The returning officer was fully authorised under rule 56 of the rules to reject a doubtful vote or to count the same as a valid vote. The petitioner thus can have no grievance regarding the improper reception, refusal or rejection of any vote or reception of any vote which is void. The learned counsel for the petitioner also did not lay stress upon this contention under section 100 (1) (*d*) (*iii*) of the Act.

In para 20 of the written statement it is admitted that it was announced after the 5th round that the petitioner was leading by more than 1400 votes and at the end of 6th round by more than 500 votes. The learned counsel for respondent No. 1 contended that this lead at the end of 5th and 6th round was incorrectly announced due to miscalculation in the totals. The mistake was detected later on and was accordingly corrected.

The final result sheets in Form 20 are EX. P-3= Ex.- RJ, Ex. P-3/A=Ex. RH, Ex. P-3/B=Ex. RK, Ex. P-3/C and Ex. P-5.

Ex. P-4/A is a certified copy of Form 21E. It was contended that according to Shri Beli Ram (PW 1) a copy of Ex. P-4/A was sent to the chief electoral officer on 7-3-1985 and the version of respondent No. 1 regarding mistake in totalling having been detected afterwards was false because Ex. P-4/A was the correct copy of the result sheet. Reliance was placed upon Ex.P-37 (letter dated 7-3-1985 issued by Shri V.K. Bhatnagar returning officer, Kullu, to the Chief Electoral Officer Shimla) in which it is mentioned that three copies of detailed result sheets in Form 20, three copies of return of election in Form 21E and three copies regarding declaration of result in Form 21C were being sent through special messenger. Shri Beli Ram (PW1) also states that Ex. P-3/C (hand-written) was prepared on 7-3-1985.

Shri V.K. Bhatnagar (RW 2) returning officer, states that Ex. P-3/A=Ex. RH (original Form 20) was being typed at the time of counting and Ex. P-3/C was prepared because the statement sent to the election commission contained incorrect totals which did not tally with the other return. The first Form sent to the Chief Electoral Officer was typed and a copy of the same retained in the office was Ex. RH. The witness could not give the exact date when mistake in totalling the votes was detected for the first time.

Now a letter Ex. P-37 was sent to the Chief Electoral Officer Shimla by the returning officer on 7-3-1985 enclosing three copies of Form 20, three copies of Form 21 E and three copies of Form 21C. Another letter dated 22-3-1985 (Ex.P-1/A) from the returning officer to the Chief Electoral Officer Shimla was sent stating that the election returns in triplicate were being sent through a special messenger, and due to inadvertance slight variation took place in the grand total of the result sheet of 57-Banjar Assmebly Constituency sent on 7-3-1985, which may kindly be rectified accordingly.

Ex. P-1/B is a wireless message dated 1-5-1985 to Deputy Commissioner Kullu in which it is mentioned that for 57-Banjar Assembly Constituency figures of votes polled shown in detailed result and in return of election Form 21E do not tally with the figures shown in index card and in the report of the election. The matter be kindly looked into and detailed report be sent immediately. The Naib-Tehsildar Election be contacted on telephone in the matter and the matter be treated as urgent.

Ex. P-1=R-2 is the reply to this wireless message from the returning officer to the Chief Elctoral Officer Shimla in which it is mentioned that *vide* letter dated 22-3-1985 (Ex.P-1/A) it was brought to the notice of the Chief Electoral Officer that due to inadvertance slight variation in total number of votes polled in favour of candidates had taken place at the time of counting of votes which was detected while preparing the index card and the report by the returning officer. The figures shown in the report by the returning officer and in the index card sent to the department on 22-3-1985 were correct and accordingly the result sheet in Form 20 and return of election in Form 21 E were again sent herewith showing the actual figures. The Naib-Tehsildar election had already talked to Superintendent of the Chief Election Commission on telephone on 1-5-1985 and the Chief Election Commission of India be apprised of the variation. The copy of this letter along with Form 20 was also sent to the petitioner for his informatiom in continuation of copy of Form 20 supplied to him earlie on 12-3-1985.

There is no dispute that the result was declared round-wise. Ex- P-5 proved by Beli Ram (PW 1) and prepared during the course of round-wise counting shows the number of votes secured at different polling stations by the respective candidates. Beli Ram (PW 1) states that Ex. P-5 was prepared from Ex.PC (hand-written document). Totals in Ex. P-5 are the same as are shown in the final result sheet Form 20 sent to the Chief Electoral Officer after correction of the totals.

Shri V.K. Bhatnagar (PW2) states that he declared respondent No. 1 elected having secured 17502 votes. The petitioner had secured 17118 votes and respondent No. 1 was leading by 384 votes. He declared the results as are shown in Ex. RH.

The votes secured by various candidates at different polling stations are given in Ex. P-3/A the original of which was prepared in hand and the total votes of the petitioner are shown as 16816, and of respondent No. 1 as 17383 votes. Although the votes secured at various polling stations by the petitioner and respondent No. 1 tally in Ex. RH and Ex. P-3/A, but there is a difference in the totalling.

In the hand-written result sheet Ex. P-3/C the petitioner is shown to have secured 16816 votes and respondent No. 1, 17383 votes, Similarly in final result sheets Ex. P-3 and Ex. RH (typed) the votes after correction in hand are shown as petitioner 16816 votes and respondent No. 1, 17383 votes. In the original totalling, however, the petitioner is shown to have secured 17118 and respondent No. 1, 17502 votes.

In Ex. P-3/B and Ex. RK (typed final result sheet forms) the total number of votes secured by the petitioner and respondent No. 1 are shown to be 17118 and 17502 votes respectively.

Thus the votes shown in the result sheets prepared round-wise (Ex. P-5) for different polling stations tally with the votes which are stated to have been secured by each of the candidate at various polling stations in the final result sheet Ex. RH. The returning officer with his letter Ex. P-37 despatched three copies of the detailed result sheet (Ex.RH in Form 20) to the Chief Electoral Officer. Shri V.K. Bhatnagar (RW 2) on the basis of entries in Ex. RH, declared the results of the petitioner and respondent No. 1 and also declared respondent No. 1 winning the election by a margin of 384 votes. As the returning officer was also required to sent the return to the election commission based upon the entries of the presiding officer's diary within one month, therefore, he directed that a return should be prepared on the basis of the entries of the Presiding Officer's diary and at the time of the preparation of this return, it was detected that the totals did not tally with the final result sheet Ex. RH sent on 7-3-1985. He thus ordered that Forms 16 should be scrutinised and on scrutiny, it was found that there was a mistake in the final totalling of the results in Ex. RH. He thus prepared a hand-written statement Ex. P-3/C after the mistake in Ex.RH was detected.

A comparison of entries in Ex. P-5 (which gives the votes secured by each candidate at each Polling Station) and the final result sheets Ex. RH and Ex. P-3/C shows that the number of

votes secured by each candidate at each polling station is the same. It is thus apparent that there was a mistake in the totalling of the votes in Ex. RH. In fact the petitioner had secured 16816 votes and not 17118 votes while respondent No. 1 had secured 17383 votes and not 17502 votes. The declaration of the result by the returning officer Shri V. K. Bhatnagar (RW 2) on 7-3-1985 was thus due to incorrect totalling of the votes although the separate votes secured at each polling station by each candidate remained the same. The respondent No. 1 was not leading by 384 votes but after correct totalling he was in fact leading by 567 votes. Shri V.K. Bhatnagar (RW2) returning officer detecting the mistake in totalling sent another copy of the final result sheet by a special messenger with the letter dated 22-3-1985 Ex. P-1/A and in this letter he specifically mentioned that slight variation of the result sheet sent on 7-3-1985 had taken place and the same be rectified. A wireless message was sent on 1-5-1985 to the returning officer informing him that the result sheet sent on 7-3-1985 did not tally with form 21E and the matter should be looked into. In reply to this wireless message Shri V.K. Bhatnagar returning officer referred to his letter dated 22-3-1985 (Ex. P-1/A) *vide* his reply Ex. P-1 and re-it erated that the corrected form had been sent on 22-3-1985 and there was a mistake in the grand totalling of the votes in the original Form No. 20 sent on 7-3-1985. As already explained there is in fact no change in the votes secured by each of the candidates at each polling station in Form 20 sent on 7-3-1985 and the subsequent Form 20 sent on 22-3-1985, therefore, it is evident that the mistake was only in the totalling of votes. Shri Bhatnagar the returning officer (RW2) has also explained that he had to give the date 7-3-1985 in the subsequent return Form 20 which was sent with the letter dated 22-3-85 after correcting the total.

The aforesaid narration of facts proves that the mistake in Ex. RH had occurred due to wrong totalling of votes and the votes polled by each candidate had neither increase nor decreased at the respective polling stations in the revised final result sheet Ex. P-3/C sent on 22-3-1985 from the earlier sheet Ex. RH sent on 7-3-1985.

Ex- P-5 was prepared round-wise and the petitioner and respondent No. 1 had respectively secured the following votes:—

	Petitioner	Respondent No. 1
1	2	3
1st round ..	2870	3799
2nd round ..	2676	2945
3rd round ..	2479	1920
4th round ..	3183	2013
5th round ..	2769	2038

At the end of the 5th round the petitioner had secured 13977 votes and respondent No. 1, 12715 votes, *i.e.* the petitioner was actually leading by 1262 votes and not 1465 votes as was announced by the returning officer. Similarly in the 6th round the petitioner secured 1724 votes and respondent No. 1 secured 2665 votes. Thus the petitioner at the end of the 6th round had secured 15701 votes and respondent No. 1 had secured 15380 votes. In this manner the petitioner was leading by 321 votes and not by 566 votes as was announced by the returning officer. In the 7th round the petitioner had secured 1072 votes while respondent No. 1 secured 1930 votes and the total number of votes secured by the petitioner was thus 16773 and respondent No. 1, 17310 votes after the 7th round. Besides these votes, 43 postal votes were secured by the petitioner and 73 postal votes by respondent No. 1. The petitioner thus secured a total number of 16816 votes and respondent No. 1 17383 votes. In Ex. RH. there is an apparent mistake in the grand total of the votes at page

No. 2 and instead of counting the grand total as 16816 for the petitioner the total is shown as 17118 votes and similarly instead of showing the grand total of 17383 votes for respondent No. 1 the same is shown as 17502 votes.

I have already mentioned that the votes polled at the different polling stations by different candidates tally in Ex. P-5, RH and P-3/C and there is no change in these figures of the three documents so far as the votes for each polling stations are concerned. In these circumstances, it cannot be said that any change or interpolation in the votes secured by the petitioner or respondent No. 1 or any other candidate was made by the election staff or the returning officer after 7-3-1985.

The explanation of Shri V.K. Bhatnagar (RW 2) that he detected the mistake in the totalling at the time when the return was ordered to be prepared after about two or three days of the declaration of the result, seems to be correct. The matter stands clarified because Shri V.K. Bhatnagar had written the letter dated 22-3-1985 (Ex.P-I/A) with which he enclosed another final result sheet given the correct total of the votes secured by the candidates. Form 16, Part 'A' is filled by the election officer in which he enters (1) the number of ballot papers received, (2) ballot papers unused (*i.e.* not issued to voters), (3) ballot papers used at the polling station, (4) ballot papers used at the polling stations but not inserted into the ballot box and (5) ballot papers to be found in the ballot box. Similarly Part-II of form 16 is signed by the counting supervisor and the returning officer after the counting of votes and in this Form the name of the candidate and the number of the valid votes secured by each candidate is given. The number of rejected ballot papers is also mentioned in this Form and the counting supervisor as also the returning officer have to mention as to whether the total number of ballot papers tally with the total number shown against item No. 5 of Part I of Form 16 or whether thre is any discrepancy noticed between the two totals. Thus form 16 Part I and Part II in fact give a correct and detailed account of ballot papers, and the final result sheets are prepared on the basis of these entries of Form 16. If there is any discrepancy in the totals then the same can be corrected/rectified after comparison of the entries of Form 16 and Form 20. The leads of the candidates after 5th and 6th round having been announced incorrectly due to wrong totalling, cannot affect the merits of the case.

Ex. P-4/A mentioned by Beli Ram (PW 1) give the actual votes polled by each candidate. Ex. P-4 is also a return of election in Form 21E and the figures shown in hand are the real figures which were sent to the Eelection Commission on 7-3-1985 as is stated by Shri Bhatnagar (RW 2). Subsequently another Form giving the typed figures which are the correct figures found after totalling, was sent to the Election Commissioner by the returning officer on 22-3-1985. Rule 56 (7) states that after the counting of ballot papers contained in all the ballot boxes used at a polling station has been completed, (*a*) the counting supervisor shall fill in and sign Part-II Result of counting in Form 16 which shall be signed by the returning officer, and (*b*) the returning officer shall make entries in the result sheet in Form 20 and announce the particulars.

Part II of Form 16 was duly filled and all the entries in Part II of all Forms 16 tally with the entries made in the result sheet in Form 20. The only difference arose in totallig of the final figures of the result sheet of Form 20.

Shri V.K. Bhatnagar (RW 2) and Beli Ram (PW1) state that at the time of the counting totalling was being done on small paper slips and the results were being declared round-wise from these rough slips, which were not retained. The non-retaining of the rough slips used for totalling the votes is immaterial because the actual entries are in Form 16, Part-II which have been correctly depicted in Form 20. It cannot, therefore, be said that there is any non-compliance with rule 56 (7) (*b*) of the rules.

The learned counsel for the petitioner also contended that form 16 Part II in respect of Piplarge polling station and Chhoara polling station were not signed by the authorities concerned. After perusal of Ex. P-7/B/1 of Piplarge polling station, I find that the signatures of the returning officer Shri V.K. Bhatnagar are not available, but at the same time, it has been signed by the counting

supervisor. Further the votes as mentioned in Form 16, Part I are also correctly mentioned in Form 16 Part II and these entries have also been made in Ex. P-5, Ex. RH and Ex. P-3/C. An omssion in signing a Form by the returning officer cannot be an illegality of irregularity to vitiate an election. This ground is also not alleged in the petition and the respondent No. 1 (elected candidate) cannot be penalised for such acts of the returning officer. Similarly it was found that the Form 16 Part II was not signed for Chhoara polling station also by the Presiding Officer. The same reasoning will apply for this Form also.

The next contention of the learned counsel for the petitioner was that under rule 56(7) (b) the returning officer was to annouce the particulars after making the entries in Form 20, but the returning officer was announcing the result round-wise. My attention was drawn to chapter 14, para 17 (procedure for counting) of the hand-book for the returning officer according to which the entries incorporated in part I of Form 20 should be read out so that the candidates or their agents may take note of the result. Alternatively entries should be written on a black borad so as to enable the returning officer to proceed uninterruptedly with the scrutiny of the counting.

There were 16 tables in the counting hall and on each table the ballot papers of one polling station were counted. After completion of the result of all the 16 tables, the same were written and after addition of the votes secured by the candidates the lead was being announced or the votes secured by each candidate were being announced in a consolidated manner so that everybody could know the result round-wise. For a round-wise declaration of the result, it was necessary to add the result of each polling station of the round. Hence it can safely be presumed that procedure according to rule 56 (7) (*b*) was followed. The returning officer who could depose about this irregularity was not asked any question as to whether he announced the particulars polling station-wise or not. The Returning Officer states that the person incharge was typing the final counting and was jotting down the final result. The total was being kept polling station-wise and the totalling done in hand was on small paper slips which were meant for the use of the Returning Officer so that he could declare the result orally round-wise. No question was asked as to whether or not the result was declared polling station-wise after making entries in Form 20 or whether the entries were being made on a black board to enable the parties or their agents to know about the result of each polling station. If a question had been asked then he could explain as to whether the totals which were being kept polling station-wise for his use, were disclosed to the parties or their agents or not.

The next contention of the petitioner's counsel was regarding the postal ballot papers. The Returning Officer (RW 2) states that 180 postal ballot papers were issued and despatched on 12-2-1985 to service voters while 94 postal ballot papers to voters on election duty were issued between 1-3-1985 to 3-3-1985. Out of these 274 ballot papers only 124 ballot papers were received back within time and date of the polling. The accounts were not maintained regarding delivery of 274 postal ballot papers to various electors and for this reason he was not in a position to say as to what happened to 150 postal ballot papers. He admits that he had not complied with the instructions contained in Chapter X para 15 of the hand-book for the Returning Officers. In the present case, this irregularity committed by the Returning Officer is not material because the non-compliance of these instructions in the hand book has not in any way materially affected the result of the election in so far as it concerns respondent No. 1. It is admitted that a total number of 274 postal ballot papers were issued from the office of the Returning Officer and out of these 124 postal ballot papers were received back. Even if the remaining 150 postal ballot papers for which there is no account are counted in favour of the petitioner still the petitioner cannot be declared successful.

Another contention of the learned counsel for the petitioner was that the petitioner or his agent was not allowed to note the serial number of the ballot papers the validity of which was challenged. The Returning Officer has only to give a reasonable opportunity to the candidate or his agent to inspect the doubtful ballot papers and in case of need the serial number of the ballot papers can be allowed to be noted down by the candidate or his agent. The unreasonable demand of the candidate or his agent, however, can be rejected.

The question regarding the validity or invalidity, that is, regarding the acceptance or rejection of doubtful votes is to be decided by the Returning Officer. Shri V.K. Bhatnagar (RW 2) states that he decided about the validity or invalidity of the votes and accepted or rejected the votes which were considered to be of doubtful nature. The petitioner or his agent were never stopped from raising objections and no threats were given to them. He never refused the petitioner or his agents to note down the ballot paper numbers of doubtful votes and that the counting agents never complained to him about it. The suggestion that the objections were raised by the petitioner or his counting agent or election agent that the votes polled in favour of the petitioner had wrongly been counted in favour of respondent No. 1 was denied.

The petitioner and his witnesses Rajesh Kumar (PW 3), Ved Parkash (PW 4), Subhash Chander (PW 5), Beli Ram (PW 6), Rupinder Singh (PW 7) and Subedar Piara Singh (PW 16) state that they were note allowed to note down the numbers of the doubtful ballot papers on account of secrecy of elections. The oral statement of these witnesses cannot be believed in view of the denial by the Returning Officer who was an impartial responsible officer. If the petitioner or his agents had been denied the opportunity of noting down the serial numbers of the doubtful ballot papers, then they could easily move the higher authorities telegraphically/telephonically or atleast by filing an application at the earliest but it was not done.

The petitioner (PW 1) and his witnesses Piara Singh (PW 16), Beli Ram (PW 6) and Rupinder Singh (PW 7) state that an application was filed by Piara Singh (PW 16) for a recount but the same was neither accepted nor rejected by the returning officer. Piara Singh (PW 16) states that when his application was not entertained by the Returning Officer then he put this application in his (Piara Singh's) pocket by taking it back from the Returning Officer and did not give this application to the petitioner. The petitioner states that he orally requested the Returning Officer for a recount but his request was not accepted and a written application filed by his election agent was also not accepted. The Returning Officer in fact did not take the application and announced the result. Beli Ram (PW 6), on Advocate. states that the application written for re-count by Piara Singh must have been remained with Piara Singh (PW 16). Rupinder Singh (PW 7) states that an application was given by Piara Singh but it was kept aside by the Returning Officer and the result was declared. The said application, which is still in possession of Piara Singh, as stated by him has not been produced till now.

Shri V.K. Bhatnagar, Returning Officer (RW 2) states that no person approached him for a recount either orally or in writing and he declared the result after completion of counting and after waiting for two minutes so as to give an opportunity to the candidate concerned or the election agent for approaching him for a re-count and that the same done in accordance with the rules. This statement is not challenged in cross-examination. Similarly, Beli Ram Election Kanungo (PW 1) who was present during the counting of the votes in the countig hall also states that no objection to counting of votes was raised by the petitioner or his agents or representatives and that no oral or written prayer for re-counting of votes was evermade before the declaration of the result. Respondent No. 1 (RW 1) also states likewise. There is no reason to disbelieve the statements of Beli Ram (PW 1) and V.K. Bhatnagar (RW 2) as they are official witnesses and are not interested in either party. They were deputed by the authorities for a fair and impartial elections. Further if any written application for a re-count had been filed, then the petitioner or his election agent would have moved the authorities concerned immediately specially when the petitioner is a person who had been contesting the eleetion from the year 1977. He was declared elected in 1977 and 1982 and had remained an M.L.A. as well as Chief Parliamentary Secretary. If any departure from the rules had been done by the authorities then the petitioner or his election agent or polling agent would not have kept quiet. Even before the election date whenever there was any doubt regarding canvassing etc. by the Government employees in favour of respondent No. 1, complaints were filed by the supporters/counting agents/polling agents of the petitioner, as is evident from the statement of Rupinder Singh (PW 7) who had filed a complaint against one Piara Lal Forest Guard on 21-2-1985 and the statement of Subedar Piara Singh (PW 16) election agent of the petitioner who filed a complaint to the Assistant returning officer on 5-3-1985 regarding the user of vehicle with registered No. HPY-570.

If application for re-count, allegedly written by Piara Singh (PW 16) election agent of the petitioner, was not entertained, then he (Piara Singh) would not have taken the application back and kept it in his own pocket without getting any orders on it. The version of the petitioner that an application for re-count was given to the Returning Officer but the same was not entertained, cannot be accepted.

The learned counsel for the petitioner also contended that there were three tendered votes but the same were not entered in Form 20. Shri Beli Ram Election Kanungo (PW 1) states that a separate account of tendered ballot papers mentioned in Form 16 Part 1 was prepared separately in Form No. 15. This witness had brought Form No. 15 which contained the list of tendered votes. The Forms were in sealed cover. The learned counsel for the petitioner did not like to prove any thing from the sealed cover containing Form No. 15 (three tendered ballot papers). Even if three tendered votes were not entered in the final result sheet, (Form 20) still the result of the election, in so far as it concerns respondent No. 1, will not be materially affected. Shri V. K. Bhatnagar (RW 2) was not croses-examined on this aspect by the petitioner's counsil. It is thus not a valid ground for claiming re-count of the votes.

In AIR 1964 S.C. 1249 (Ram Sewak Yadav *vs.* H.K. Kidwai and others), Yadav was declared successful in the general elections from Barabanki constituency and Kidwai was defeated. Kidwai challenged the election of Yadav as *void* and claimed a secrutiny and re-count of votes on the following principal grounds:—

1. That there had been improper reception, refusal and rejection of votes at the time of counting and in consequence thereof the election was materially affected.
2. That there were discrepancies between the total number of votes mentioned in Form 16 and Form 20.
3. That the tendered votes were wrongly rejected by the returning officer and on that account the election was materially affected.
4. That at the polling station No. 29, Kajgawan in Bhitauli Unit and Kursi polling station in Kursi Assembly unit, the polling officers did not give ballot papers to the voters.
5. That on counting of votes of Bhitauli Assembly unit continued till 8.30 p.m. in insufficient light notwithstanding the protest lodged by the petitioner; and
6. That on a true count he (Kidwai) would have received a majority of valid votes and that he was entitled to be declared duly elected.

These allegations were denied by Yadav. The Tribunal held that there was no proof in respect of pleas 3, 4 and 5 and that the second ground also failed because the original Forms No. 16 and 20 had not been called. For pleas 1 and 6 it was held that no *prima facie* case was made out as the facts had not been bought to the notice of the Tribunal for making out a *prima facie* case disclosing that errors were committed in reception, refusal or rejection of votes at the time of counting. Thus, the Tribunal dismissed the petition of Kidwai.

An appeal was preferred to the High Court of Allahabad and the High Court after accepting the appeal remanded the case for a trial to the Tribunal with a direction that the Tribunal should give reasonable opportunity to both the parties to inspect the ballot papers and other connected papers.

Yadav preferred an appeal in the Supreme Court against the order of the High Court. After discussing the various provisions of the Act and the rules as also of the Code of Civil Procedure, the Supreme Court allowed the appeal of Yadav and after setting aside the order of the High Court, the learned Judges of the Supreme Court observed as follows in para 6 and 7 of the judgment:

"6. An election petition must contain a concise statement of the material facts on which the petitioner relies in support of his case. If such material facts are set out the Tribunal

has undoudtedly the power to direct discovery and inspection of documents with which a Civil Court is invested under the Code of Civil Procedure when trying a suit. But the power which the Civil Court may exercise in the trial of suits is confined to the narrow limits of Order 11 Code of Civil Procedure. Inspection of documents under Order 11 Code of Civil Procedure may be ordered under Rule 15, of documents which are referred to in the pleadings or particulars as disclosed in the affidavit of documents of the other party, and under Rule 18 (2) of other documents in the possession or power of the other party. The returning officer is not a party to an election petition and an order for production of the ballot papers cannot be made under Order 11 C.P.C. But the Election Tribunal is not on that account without authority in respect of the ballot papers. In a proper case where the interests of justice demand it, the Tribunal may call upon the returning officer to produce the ballot papers and permit inspection by the parties before it of the ballot papers that power is clearly implicit in sections 100 (1) (*d*) (*iii*), 101, 102 and rule 93 of the Conduct of Election Rules, 1961. This power to order inspection of the ballot papers which is apart from Order 11 C.P.C. may be exercised, subject to the statutory restrictions about the secrecy of the ballot paper prescribed by sections 94 and 128 (1).

7. An order for inspection may not be granted as a matter of course; having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled:

(*i*) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(*ii*) the Tribunal is *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary. But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidenc to support such pleas. The case of the petitioner must be set out with precision supported by everments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection."

Again in para 9, the learned Judges observed as under:

"9. There can, therefore, be no doubt that at every stage in the process of scrutiny and counting of votes the candidate or his agents have an opportunity of remaining present at the counting of votes, watching the proceedings of the returning officer, inspecting any rejected votes and to demand a re-count. Therefore, a candidate who seeks to challenge an election on the ground that there has been improper reception, refusal or rejection of votes at the time of counting, has ample opportunity of acquainting himself with the manner in which the ballot boxes were scrutinized and opened and the votes were counted. He has also opportunity of inspecting rejected ballot papers, and of demanding a re-count. It is in the light of the provisions of section 83 (1) which require a concise statement of material facts on which the petitioner relies and to the opportunity which a defeated candidate had at the time of counting, of watching and of claiming a re-count that the application for inspection must be considered."

It was finally held that Kidwai had not pleaded sufficient materials, and that the allegations of Kidwai that he was satisfied that on inspection and scrutiny of ballot papers he would be able to demonstrate that there had been wrong counting on account of improper reception, refusal or rejection of votes was wholly insufficient to justify a claim for inspection. He had to place before the Tribunal evidence *prima facia* indicating that an order for inspection was necessary in the interests of justice, which he failed to do.

In 1974 I.L.R. (H.P. Series) 1218, *Beli Ram Bhalaik, vs. Jai Behari Lal Khachi and another* the Supreme Court followed the judgment delivered in Ram Sewak Yadav (supra) and the request for a re-count was disallowed. In Beli Ram Bhalaik (supra) the dispute was with respect to the election to 6-Kumarsain Assembly constituency of Himachal Pradesh. Jai Behari Lal Kachai was declared elected and Bhalaik was defeated by a margin of 118 votes. Bhalaik filed a petition challenging the election of Khachi on the ground of several corrupt practices and some irregularities and illegalities in the counting of votes and a prayer was made that re-count be ordered. The petition was dismissed by the High Court and Bhalaik filed an appeal in the Supreme Court. In the Supreme Court it was seriously pressed that grave irregularities and illegalities had been committed in the counting of votes and some of the instances upon which stress was laid are enumerated in para 7 of the judgment as follows:—

"(*a*) At the counting Rattan Chand counting agent of the petitioner at Table No. 5 noticed "that in one bundle about 49 votes of the petitioner had been put and on the top of it one ballot paper cast in favour of Khachi was placed." This gave the false impression that the whole bundle of 50 ballot papers was in the name of Khachi, and accordingly they were counted in Khachi's favour, causing a loss of about 49 votes to the petitioner. The petitioner was informed by his other counting agents also that such worng things had been done at the other tables as well. In this way the petitioner believes that he has been deprived of at least 500 votes.

(*b*) Quite a large number of votes cast in favour of the petitioner were declared invalid whereas a large number of invalid votes which deserved to be rejected were counted in favour of the respondent No. 1.

(*c*) During the count on the second round no invalid vote was declared in respect of the counting conducted at Table No. 8. In the result sheet, however, the petitioner now finds 15 votes as having been declared invalid at that table in the second round counting.

(*d*) Even though the result was yet to be announced officially, the counting agents of Khachi raised shouts that he had won and caused great confusion and chaos. The petitioner and his counting agents were keen to file an application to the Returning Officer requesting for a recounting of the votes. Shri Tara Chand Sirkek, one of the counting agents of the petitioner was, therefore, sent out to get an application typed for the purpose, but when he came back with the typed application, on account of the confusion and chaos already going on in the counting room he was not permitted to enter the counting room by the security staff, though he was having on his chest the proper identity chit. It was, therefore, after considerable difficulty and delay that the application could at last be presented to the Returning Officer. The Returning Officer however made an order that the demand for recounting could not be accepted by him as the certificate of election had already been issued."

Evidence was led by Bhalaik to prove that the counting of votes were irregular. Shri Alok the Returing Officer, however, explained the procedure which had been adopted by him at the time of the counting and had stated that Bhalaik did not complain that a lot of mistakes had been committed in the counting of votes.

In these circumstances the Supreme Court observed as under:—

"13. Alok's version receives full assurance from the circumstance that even in the belated application Ex. DW-13/2 no irregularity or illegality, whatever, in the counting was mentioned. All that was stated therein was that the appellant was not satisfied with the counting and, therefore, wanted a re-count. It did not contain any ground on which a re-count was sought, and as such, did not comply with the mandatory requirement of Rule 63(2) of the Conduct of Election Rules, 1961, which provides that after the announcement of the result of counting, a candidate or in his absence his election

agent or any of his counting agents may apply in writing to the Returning Officer to recount the votes either wholly or in part stating the grounds on which he demands such recount. A whimsical and bald statement of the candidate that he is not satisfied with the counting, is not tantamount to a statement of the "grounds" within the contemplation of Rule 63 (2). The application was thus not a proper application in the eye of law. It was not supplemented even by an antecedent or contemporaneous oral statement of the author or any of his agents with regard to any irregularities in the counting. It was liable to be rejected summarily under sub-rule (3) of Rule 63, also. That apart, it was presented about half an hour after the Returning Officer had completed and signed the result-sheet in From 20. Sub-rule (6) of the Rules expressly debars the Returning Officer from entertaining an application for re-count at such a late stage. The Returning Officer had, therefore, rightly rejected the application as belated."

The Supreme Court after dealing with the evidence observed as follows:-

"14. From all that has been said above, it is clear that the allegations of irregularities and illegalities in the counting of votes have been subsequently invented as an after-thought. That apart, these allegations in the petition are more or less vague and general. They are lacking in material facts. The evidence adduced in regard to this issue also does not make out a *prima facie* case for a re-count.

15. Since the pronouncement of this Court in Ram Sewak Yadav *vs.* Hussain Kamal Kidwai and others it is settled law that sections 100 (1) (*d*) (*iii*), 101, 102 of the Act and Rule 93 of the Conduct of Election Rules, 1961, implicitly give the Court trying an election petition the power to order a re-count or production of the ballot papers and permit their inspection by the parties. Since an order for a recount touches upon the secrecy of the ballot, it should not be made lightly or as a matter of course. Although no caste-iron rule of universal application can be or has been laid down, yet from the bead roll of the decisions of this court, two broad guide-lines are discernible: that the court would be justified in ordering a re-count or permitting inspection of the ballot papers only where (*i*) all the material facts on which the allegations of irregularity or illegality in counting are founded, are pleaded adequately in the election petition, and (*ii*) the Court/ Tribunal trying the petition is *prima facie* statisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties: see Ram Sewak Yadav *vs.* Hussain Kamal Kidwai (supra), Dr. Jagjit Singh *vs.* Giani Kartar Singh, Jitendra Bahadur Singh *vs.* Krishna Behari, and Smt. Sumitra Devi *vs.* Shri Sheo Shankar Prasad Yadav.

16. In the present case neither of the tests above mentioned has been satisfied. The allegations in the petition are not precise. They are mostly general and vague floating on suspicions and beliefs of the petitioner, rather than resting on terra firma of material facts. As was stressed in Ram Sewak Yadav's case (supra), mere allegations that the petitioner suspects or believes that there has been improper reception, refusal or rejection of votes or there have been irregularities in the counting of ballot papers will not be sufficient to support an order of recount and inspection. It is an irony of things that in elections, as in horse-racing, sure beliefs, hopes and expectations of the contestants often end up as also rans. The allegations of irregularities in counting appearing in the petition stem from such a 'sure' belief turned 'unsure'. We, therefore, do not find any substance in the contention of the appellant that the High Court was in error in rejecting the appellant's request for a re-count."

In AIR 1954 S.C. 513 (*Vashist Narain Sharma* vs. *Dev Chandra and others*), it was held that the words "the result of the election has been materially effected" indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner

between the contesting, candidates as would have brought about the defeat of the returned candidate. It cannot be held that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. This is a matter which has to be proved and the onus of proving it lies upon the petitioner. Should the petitioner fail to adduce satisfactory evidence to enable the Court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand.

The language of section 100 (1) (*d*) is too clear for any speculation about possibilities. The section clearly lays down that improper acceptance is not to be regarded as fatal to the election unless the Tribunal is of opinion that the result has been materially affected. Where the finding of the Tribunal that the result of the election has been materially affected is speculative and conjectural, the Supreme Court will interfere with the finding in special appeal.

In AIR 1955 S.C. 233 (*Hari Vishnu Kamath* vs. *Ahmad Ishaque and others*) it was held that before an order setting aside an election could be made, two conditions must be satisfied:

(*a*) It must firstly be shown that there had been improper reception or refusal of a vote or reception of any vote which is void, or non-compliance with the provisions of the Constitution or of the Act or any Rules or orders made under that Act or of any other Act or Rules relating to the election or any mistake in the use of the prescribed form.

(*b*) It must further be shown that as a consequence thereof the result of the election had been materially affected. The two conditions are cumulative, and must both be established and the burden of establishing them is on the person who seeks to have the election set aside.

In 1975 (4) S.C.C. 822 (*Suresh Prasad Yadav* vs. *Jai Prakash Mishra and others*), the question regarding inspection and re-count of papers was again considered by the Hon'ble Judges of the Supreme Court. Yadav had contested an election from 168-Katoria Bihar Legislative Assembly in March, 1972 as a nominee of Indian National Congress (R) and had secured 16,074 votes in the election. Mishra was an independent candidate and was declared elected having secured 16,649 votes. 1,219 votes had been rejected as invalid and three other candidates had secured 2,347, 8,001 and 1,542 votes, respectively. Yadav filed an election petition challenging the election of Misra on the grounds that several irregularities and illegalities were committed in the counting of votes and he claimed a re-count of the votes.

The High Court found that the allegations for re-count were not substantiated and the election petition of Yadav was dismissed. Yadav filed an appeal in the Supreme Court but his appeal was also dismissed. The various allegations regarding irregularities/illegalities in the counting of votes made by Yadav were as follows:—

(1) Four unauthorised persons, *viz.*, Ajudhya Prasad Singh, Q.M. Zaman, Parvez Ahmed and Radhey Sham Sah were allowed to work as counting supervisors at tables Nos. 4, 57 and 9 in breach of the rules and this had vitiated the counting.

(2) In the first round of counting at table No. 4 in the box relating to polling station No. 74, Madhopur U.P. School, 50 unsigned ballot papers were found in excess of those actually polled. When this was detected and brought to the notice of the Assistant Returning Officer, he, in violation of Rule 93(1) of the Conduct of Election Rules (for short, called the Rules) and to cover up the irregularity opened that packet and inspected those un-used ballot papers.

(3) The detailed result-sheet which was *inter-alia* prepared table-wise, in accordance with the instructions of the Election Commission, has been deliberately suppressed to prevent detection of mistakes and manipulations made in the counting.

(4) About 600—700 uncounted ballot papers in bundles were kept below his table by the Assistant Returning Officer. In the final round of counting, despite protests, 600 votes were counted twice, in favour of respondent No. 1. That was why the petitioner who at the end of the third round was leading by a margin of 2,205 votes, was shown having lost by 575 votes to respondent No. 1, notwithstanding the fact that in the last round there were only 3,800 ballot papers to be counted.

The Supreme Court, while dismissing the appeal of Yadav, held:—

(*a*) An order for inspection and recount of the ballot papers cannot be made as a matter of course. The reason is two-fold. Firstly such an order affects the secrecy of the ballot which under the law is not to be lightly disturbed. Secondly, the rules provide an elaborate procedure for counting of ballot papers. The procedure contains so many statutory checks and effective safeguards against mistakes and fraud in counting, that it can be called almost trickery foolproof. Although no hard and fast rule can be laid down, yet the broad guidelines as discernible from the decisions of the Supreme Court, may be indicated thus:

The Court would be justified in ordering a re-count of the ballot papers, only where:—

(1) the election petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded;
(2) on the basis of evidence adduced such allegations are *pirma facie* established, affording a good ground for believing that there has been a mistake in counting; and
(3) the court trying the petition is *prima facie* satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.

(*b*) As regards the presence of four un-authorised persons at the counting there was not even an oblique hint in the election petition to that effect. It was mentioned for the first time in the application made a year later seeking a re-count made at the stage of final arguments. So there was inadequte notice to the respondent to produce counter-evidence. The possibility of the alleged un-authorised persons having been appointed and kept in reserve by a separate order cannot be ruled out. No violation of Rule 53 has been made out.

(*c*) As regards the second ground only one un-used ballot paper was found un-signed and not fifty as alleged. Regarding violation of Rule 93(1), the fact to be noted is that Rule 93 has not been placed in any of the parts relating to counting of votes.

Viewed in the light of the scheme of the Rules, and its setting, the language of Rule 93 seems to be clear enough to indicate that the custody of the District Election Officer or the Returning Officer spoken of in the rule is a post-election custody. The word "unused" in the context means that which "was made available for use in the election but remained un-used in the election". The Returning Officer was, therefore, fully competent to open the packet and inspect and count the ballot papers found therein. So the conclusion is inescapable that the act of the Returning Officer in opening the packet, and in inspecting and counting the un-used ballot papers found therein, far from amounting to an illegality, was necessary for the due performance of the duty enjoined on him by the Rules.

(*d*) Again a perusal of Form 20 prescribed under Rule 56(7) of the Rules would show that it does not require, that the final result-sheet should be prepared table-wise also. It is sufficient if the final result-sheet is candidate-wise and round-wise. The final result-sheet (Ex.7) exactly conform to the prescribed Form-20. The absence of the detailed result-sheet does not make the checking and verification of the figures entered in the

final result-sheet, Ex. P-7, impossible or even difficult. Its preparation is not a requirement of any statutory provision. It is prepared only as a matter of convenience in view of the instructions of the Election Commission, by carrying over, collating and totalling the figures from the check memos containing table-wise figures of each round of counting. It is a sort of rough intermediary tabulation intended to facilitate the compilation of the final result-sheet in the prescribed form. The basic figures from which the final result-sheet, whether detailed or abstracted, are worked out are given in the check memos pertaining to the various counting tables. Such check memos are available and indeed reference to some of them was specifically made. The correctness or otherwise of the figures given in Ex. 7 could easily be verified by tallying the same with the aggregate of those given in the check memos.

(*e*) As regards the last contention the version placed in the application to the Returning Officer for recount is different to that in the election petition. What was earlier said to heve been 'counted' twice over had now become completely 'uncounted'. What was then alleged in Ex. 3 to have been counted on the table, has now gone underneath the table. The original allegation in Ex. 3 (which was repeated in the second application) was manifestly untenable, because if there was double counting of any ballot papers, the total of the votes polled should have exceeded by the number double counted. No such excess was reflected in the grand total of the final result-sheet.

The following judgments were relied upon by the learned counsel for the petitioner:

In *Jainarainlal Agarwal* vs. *Nand Kumar Dani and others* (26 E.L.R. 136), the election of Shri H. P. Bhaghel (respondent No. 2) was challenged by a voter Jai Narain Lal claiming that Nand Kumar Dani (respondent No. 1) be declared elected. The election petition was dismissed by the Election Tribunal. An appeal was preferred in the High Court of Madhya Pradesh. The main ground was that the Returning Officer had wrongly and illegally rejected 1,250 votes cast in favour of respondent No. 1. Although the Returning Officer had ordered a re-count but he did not recount and scrutinise the rejected votes of the first counting. It was held by a Division Bench that a perusal of the Returning Officer's order of re-count showed that he had ordered a recount on total polling and not only of the votes accepted as valid votes. But contrary to his own order he did not consider at the time of recount the votes which were already rejected in the first counting. The omission after having ordered re-count of total polling was illegal and materially affected the result of the election. The final result-sheet produced before the Tribunal showed that the figures in it were not free from serious mistakes and the result-sheet was, therefore, *prime facie* evidence which entitled the petitioner to have the ballot papers inspected and examined and the Tribunal was in error in holding to the contrary. It was held that re-counting as a rule is generally ordered when the difference between the valid votes obtained by each candidate is very narrow, mere re-counting of only valid votes of each candidate would have no meaning. The narrow margin itself puts the Returning Officer on guard and persuades him to assure himself as also the candidates that even after scrutiny either the narrow margin remains intact, or that it is widened or is further reduced or results in the opposite direction. This assurance apparently can never be secured unless and until the initially rejected votes as also once accepted votes are scrutinised and considered afresh.

This judgment has no applicability to the facts and circumstances of the present case because in the present case no prayer for re-count was ever made and no objection was raised at the time of counting of votes about illegal acceptance or rejection of the votes and the votes were never ordered to be re-counted by the Returning Officer.

In 34 E.L.R. 269 (*Bhailal Narottamdass Patel* vs. *Mangaldas Gordhandas Pola and another*), the election of Mangaldas Gordhandas Pola (respondent No. 1) was challenged by the petitioner Bhailal Narottamdass Patel (appellant). One of the grounds was that there was improper reception or improper refusal or improper rejection of votes and the result of the election had been

materially affected. It was alleged that during the counting in the counting hall proper facilities were not given to the counting agents of the candidates to see the work that was being done by the Counting Assistants and counting supervisors on the different counting tables. At one stage of the counting, there was inadequate light and there was some commotion inside the hall which resulted in improper reception or rejection of votes or reception of votes which were void and the counting staff itself decided whether a particular vote should be treated as valid or invalid and having decided the same as valid, the counting staff proceeded to treat the vote as for one or the other candidate which decision should have been taken by the Returning Officer. A Single Judge of the Gujarat High Court, after appreciation of the evidence held that the question regarding the validity/invalidity or the reception or rejection of the votes was decided by the Counting Assistants and counting supervisors and not by the Returning Officer himself. The rules or the guidelines had not been followed because the counting of the votes was not according to the procedure and the persons who accepted or rejected the votes as valid or invalid votes, were not authorised under the rules to do so. In these circumstances, a re-count was allowed. This judgment is distinguishable and is not applicable to the facts of the present case. In the present case, as stated by Shri V.K. Bhatnagar (RW 2), the procedure was duly followed and the counting process was completed according to the procedure as laid down in the rules and the hand-book.

In 42 E.L.R. 198 (*S.N. Misra* vs. *Dr. Ram Manohar Lohia and others*), Dr. Ram Manohar Lohia (respondent No. 1) was declared elected and his election was challenged by Shri S.N. Misra (petitioner). Amongst various other allegations, it was also alleged that there were mistakes in Forms 16 and 20 of some polling stations and these forms were manipulated. There was improper reception of votes which were validly cast in favour of the petitioner but were wrongly counted in favour of respondent No. 1 and other respondents and for this reason the result of the election was materially affected.

The Court found that in certain polling stations the votes received by the candidates were inter-changed in the relevant Form No. 16 with the result that the petitioner was shown to have secured 1,391 votes less than what he actually secured and further in Form No. 20, there was totalling mistake due to which the petitioner was shown to have secured 200 votes less. The petitioner thus was able to show that he had secured 1,591 votes more than shown in Forms 16 and 20 and was entitled to a declaration that he was duly elected. The Returning Officer had admitted that the inter-change of votes appeared to be deliberate on the part of the Supervisor concerned. It was held that in this state of affairs any presumption that Forms Nos. 16 and 20 of the remaining polling stations were correctly filled in, would be, to a large extent, rebutted. Therefore the correct over-all position could not be ascertained unless and until all the ballot papers were again scrutinised and counted and a recount was necessary to clear the picture. On re-scrutiny and recount the election of respondent No. 1 was held to be void and the petitioner was declared duly elected. This judgment has no applicability to the facts and circumstances of the present case, because, as already discussed, there is no mistake in the entries made in Forms 16 and 20 and there is nothing on the record to show that any deliberate or intentional manipulation has been done to favour any of the candidates. On the other hand, mistakes detected in the grand total were rectified immediately after it was noticed by comparison of the Forms 16 and 20.

In A.I.R. 1983 S.C. 1311 (*Arun Kumar Bose* vs. *Mohd. Furkan Ansari and others*), Arun Kumar Bose (appellant) was declared elected as he had secured 24 votes more than Furkan Ansari (respondent No.1). The election was challenged on the ground that during the course of counting of ballot papers illegalities and irregularities had been committed, that is, on table No. 10 Booth No. 10 (Fukbandi Primary School) 74 ballot papers of the respondent No. 1 were wrongly rejected on the ground that they did not contain the signature of the Presiding Officer. Similarly 31 ballot papers of respondent No. 1 were rejected on different tables on the ground that these ballot papers did not contain the signatures of Presiding Officers. Such ballot papers were rejected by Assistant Returning Officer inspite of the objections having been raised by respondent No. 1 and his counting agents. The High Court allowed the inspection of 74 rejected ballot papers from Booth No. 10 and after inspection of the ballot papers it was found that the rejection of these ballot

papers was wrong. The election of appellant was set aside and respondent No. 1 was declared elected.

An appeal was preferred in the Supreme Court by the appellant. The Supreme Court held that the pleadings in the petition were sufficient and the material facts had been narrated in a proper way. The rejection of the ballot papers which had been cast in favour of respondent No. 1 was wrong because the same had been rejected only on the ground that these did not have the signatures of the Presiding Officer. The evidence had been produced to prove that the Presiding Officer was sleeping under a Neem tree at a distance from the Booth and had not signed the ballot papers. This was due to no fault of the candidates when the ballot papers given to the voters were not spurious. The obligation to sign the ballot papers was of the Presiding Officer. To put his signatures cannot be a sufficient ground for rejecting the ballot paper. The facts in this judgment are distinguishable and are not applicable in the present case. The ballot papers were rejected due to no fault of the candidate and the rejection of the ballot papers was *prima facie* illegal. Respondent No. 1 had lost the election by a very narrow margin.

In A.I.R. 1982 H.C. 1569 (*Kumari Sharda Devi* vs. *Krishan Chand Pant*) it has been observed that the petitioner has to offer *prima facie* proof of errors in counting and if errors in counting are *prima facie* established, a re-count can be ordered. If the allegation is of improper rejection of valid votes which is covered by the broad spectrum of scrutiny and re-count because of re-counting, because of miscount, petitioner must furnish *prima facie* proof of such error. If proof is furnished of some errors in respect of some ballot papers, scrutiny and re-count cannot be limited to those ballot papers only. If the re-count is limited to those ballot papers in respect of which there is a specific allegation of error and the corelation is established, the approach would work havoc in a Parliamentary constituency where more often we find 10,000 or more votes are being rejected as invalid. Law does not require that while giving proof of *prima facie* error in counting each head of error must be tested by only sample examination of some of the ballot papers which answer the error and then take into consideration only those ballot papers and not others. This is not the area of inquiry in a petition for relief of re-count on the ground of miscount. *True it is that a re-count is not granted as of right, but on evidence of good grounds for believing that there has been a mistake on the part of Returning Officer. This Court has in terms held that* prima facie *proof of error complained of must be given by the election petitioner and it must further be shown that the errors are of much magnitude that the result of the election so far as it affects the returned candidate is materially affected, then re-count is directed.* In this case the Returning Officer had charged an easy course un-supportable by evidence and a serious error had been pointed out in respect of 2 ballot papers out of 11 ballot papers. It was held that once the error is established the scrutiny and re-count has to be ordered as a *prima facie* case of miscount is made out (emphasis supplied).

In the present case no *prima facie* error in counting has been pointed out by the learned counsel for the petitioner, and a general allegation that there was illegal acceptance of the votes or the votes were illegally rejected is not *prima facie* proof of the allegations. This judgment cannot help the petitioner and is distinguishable.

In 40 E.L.R. 281 (*Swami Rameshwaranand* vs. *Madho Ram and another*), several irregularities were found in the counting of the votes and as such a recount was ordered.

In two judgments of the Delhi High Court, Election Petition No. 3 of 1983 (*V. V. Mahajan* vs. *Sardar Swaran Singh Ghose*) and Election Petition No. 5 of 1983 (*Laxman Singh* vs. *Gurbax Singh and others*) decided on 31-5-1984, it was found that the entries in Form 16 Part I and II did not conform with the corresponding entries of Form 20 and there was discrepancy in Part II of the Form 16. In such circumstances the learned Judge ordered a recount of the votes. These two cases are, therefore, also distinguishable and have no applicability in the facts and circumstances of the present case.

From the law as has been enunciated by the Supreme Court, it is thus clear that the allegations regarding irregularity or illegality in the counting should be specific, that is, there should be adequate statement of all the material facts and evidence should be adduced to establish such allegations affording a good ground for believing that there have been mistakes in counting. Further the Court should be satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.

In the present case, the various allegations are contained in paras 14 to 22 of the petition. Para 14 only states that there were 16 tables provided for counting and the counting was concluded in seven rounds. There is a general allegation that the Returning Officer Shri V.K. Bhatnagar, Deputy Commissioner, Kullu was posted at Kullu as Deputy Commissioner and he joined his duties on 21st January, 1985. It is alleged that he was posted to help respondent No. 1.

This is a general allegation and there is no evidence to prove that the transfer of Shri Bhatnagar in his capacity as Deputy Commissioner was done with an idea to help the respondent No. 1. There is no suggestion to Shri Bhatnagar (RW 2) that he was posted to Kullu as Deputy Commissioner for rendering help to respondent No. 1.

In para 15 it is alleged that the petitioner received complaints regarding wrong counting of votes and the complaints were brought to the notice of the Returning Officer from time to time but the Returning Officer did not take any action by saying that he will see to it in the last. Some votes were clearly marked against the name of the petitioner but, because of a small and negligible portion of the marking went below towards the column of respondent No. 1, they were counted in favour of respondent No. 1.

It is also a vague type of allegation. If the petitioner or his election agent or counting agents were aggrieved from any vote which had been counted in favour of respondent No. 1 wrongly, then the petitioner could claim for a recount of the votes at the time and could also bring the fact to the notice of the Returning Officer. The Returning Officer (RW 2) has categorically stated that the petitioner or his agents never protested to him or any other person in his presence that the counting was not being done according to the procedure. He proceeded according to rules as has already been discussed. He has denied the suggestion that any objections regarding counting were received from the petitioner or his counting agents and election agents. The petitioner has not even mentioned the number of the ballot papers for which he felt that they had been marked in his favour but were counted in favour of respondent No. 1. Evidence has already been discussed and there is no reason to disbelieve the statement of the Returning Officer.

In para 16, the petitioner has again alleged that certain votes marked in his favour were counted in favour of the respondent No. 1 and that even the doubtful votes taken to the Returning Officer were counted in favour of respondent No. 1 by the Returning Officer. The petitioner has further alleged that when objections were raised to this illegal or irregular counting, then the Returning Officer remarked that if any objections are raised, then the petitioner as well as his counting agents would be turned out. It is also alleged that no random check was carried out. The allegations in this para are again not substantiated as has been discussed in earlier part of the judgment.

In para 17 of the petition, it is alleged that during the first round, when 10 votes of the petitioner on Table No. 6 were traced in the bundles of respondent No. 1 and eventually these were counted in favour of the petitioner, but on subsequent occasions, it was not done. Although several votes of the petitioner were counted in favour of respondent No. 1 on the objections being raised by the petitioner, his election agents or counting agents, it was assured that a re-checking would be done at the end of the counting, but no such re-checking was done. The allegations in this para of the petition are very vague and indefinite and without any material facts. The Returning Officer has denied these allegations and there is no reason to disbelieve him as has already been discussed.

In para 18, it is alleged that doubtful votes used to be placed before the Returning Officer for his decision and there were 498 doubtful votes but the Returning Officer in order to help the respondent No. 1 counted several votes in favour of respondent No. 1 and several votes casted in favour of the petitioner were wrongly rejected. The petitioner has given the number of various votes which he claims that the same should have been counted in his favour. I have already held that the Returning Officer was the authority under the rules to give a decision regarding the validity/invalidity or the rejection or the reception of the votes. Without any specific allegations and materials, the allegations cannot be accepted as has already been discussed.

Paras 19 and 20 of the petition are general paras and these have been discussed in the earlier part of the judgment.

In para 21, the petitioner has alleged that the final result of the election shown in Form 20 is wrong and the rules 45, 56 and 64 have not been complied with. Oral and documentary evidence has been referred to prove the contravention of the rules which has already been discussed in detail.

Para 22 of the petition is regarding postal ballot papers and these averments have been discussed in the earlier part of this judgment.

From the above discussion, I am of the opinion that the petitioner has not been able to make out a *prima facie* case for recount of the votes and in such circumstances recount of the votes cannot be allowed. As discussed, issue No. 1 has not been proved and the same is accordingly decided against the petitioner.

Issue No. 2.

The learned counsel for the petitioner frankly and rightly conceded that there was no oral or documentary evidence to prove this issue. His only contention was that the evidence produced will be relevant in deciding issue No. 3. The learned counsel for the respondent No. 1 also contended that the petitioner had failed to prove this issue. In view of the statement of the petitioner's counsel, this issue is decided against the petitioner as not pressed, but the evidence, if any, on this issue will be considered in case the same is relevant for the decision of other issues.

Issue No. 3.

The learned counsel for the petitioner contended that the posters Ex. P-16 and P-17 were printed, published and distributed by respondent No. 1, his election agent and other persons with the consent of respondent No. 1 and his election agent. In a public meeting held at Bamsal on 28-2-1985, these posters were read out in the presence of Shri Virbhadra Singh, Chief Minister and respondent No. 1. Another meeting was addressed by Shri Virbhadra Singh, Chief Minister at Jari on 28th February, 1985, and in this meeting too, these posters were distributed. It was contended that by printing, publishing and distributing these posters respondent No. 1 had committed a corrupt practice of undue influence under section 123 (2) (*a*) (*ii*) of the Act.

The learned counsel for respondent No. 1 contended that the alleged posters were never printed, published or distributed by respondent No. 1 or his election agent or by any other person with their consent. The printing and distribution of such posters by respondent No. 1 his election agent or any other person on his behalf was not proved.

The evidence along with the two posters were read out in the court and I have considered the respective contentions.

Section 123 (2) of the Act reads as follows:—

"123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act.—

(1) x x x x x x x x x x x

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that—

(*a*) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(*i*) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(*ii*) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of devine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(*b*) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) x x x x x x x x x x x

(4) x x x x x x x x x x x

(5) x x x x x x x x x x x

(6) x x x x x x x x x x x

(7) x x x x x x x x x x x"

Ex. P-16 and P-17 are the two posters and their translations (which have been annexed by the petitioner) are Ex. P-16/A and P-17/A. The manuscript of the poster Ex. P-16 is Ex-P-16/B, and the manuscripts of Ex P-17 are Ex P-17/B and P-17/C

Column 5 of Ex RC (Return of expenses) filed by respondent No. 1 proves that a payment of Rs 2500/- was made to Progressive Printing Press by respondent No. 1 on 19th February, 1985

The posters Ex P-16 and P-17 were issued in the name of Congress (I), and they naturally pertain to the elections of March 1985. There is no controversy that posters of the type Ex. P-16 and P-17 were printed in the name of Thakur Tej Ram in praise of respondent No. 1. The learned counsel for the petitioner contended that these were printed and distributed at the instance of respondent No. 1

Regarding printing of posters Ex P-16 and P-17, Shri Amarnath Sharma (PW 18) states that these posters were printed in Progressive Printing Press, Kullu of which he became the owner in the end of 1984. The bills nos 171 and 172 dated 19-2-1985 for the printing of these leaflets were issued in the name of Thakur Tej Ram and the payment was also made by a person who posed himself as Thakur Tej Ram Shri Janak Raj (PW 29, Proprietor of Thakur Printing Press, Dhalpur states that in the month of February, 1985 Thakur Tej Ram came to him with the manuscript of

the posters Ex. P-16 and P-17 but he was already over-burdened with printing work and on his refusal to do the printing, Thakur Tej Ram asked him as to from whose press it would be possible for him to get the posters printed. He suggested Progressive Printing Press for the purpose and accompanied Thakur Taj Ram to the Progressive Printing Press where the order was placed by Thakur Tej Ram for printing the posters. This witness had done printing work for B. J. P. candidates.

The posters Ex. P-16 and P- 17 are in the name of Thakur Tej Ram and the name of the press, that is, Progressive Printing Press in which these posters were printed, and the Congress (I) is given at the end.

It is thus proved that posters Ex. P-16 and P-17 were printed at the Progressive Printing Press. There is, however, no evidence that these posters were printed at the instance of respondent No. 1 except an inference that the posters are in the name of Congress (I) and in praise of respondent No. 1. Respondent No. 1 states that Thakur Tej Ram is not related to him even remotely, but Thakur Tej Ram has not been produced by either party.

The next question for consideration is as to whether these were distributed to the voters electors with the consent of respondent No. 1 or his election agent and whether the same were read out in the presence of respondent No. 1 or his election agent or distributed in his presence.

The petitioner (PW 2) states that the contents of the posters were read out by Shri Tej Ram in a public election meeting dated 28-2-1985 at Banjar which was attended by the Chief Minister Shri Virbhadra Singh and respondent No. 1. The petitioner himself did not attend the meeting but came to know about it on 2-3-1985 from Kanwar Rupinder Singh, Subedar Piara Singh, Dev Raj and some others. He received the information regarding distribution of posters but did not make any written complaint on or after 2-3-1985 regarding the publication of the posters. He admits that respondent No. 1 did not give his consent to Thakur Tej Ram in his presence.

Kanwar Rupinder Singh (PW 7) states that he was a counting agent of the petitioner and attended the Congress (I) election public meeting at Banjar on 28-2-1985 which was presided over by Shri Virbhadra Singh, Chief Minister and the respondent No. 1 was sitting on the dais along with the Chief Minister. The poems mentioned in Ex. P-16 and P-17 were read out in this meeting by Thakur Tej Ram and the various facts mentioned in Ex. P-16 and P-17 regarding the petitioner were incorrect. The posters were distributed amongst the persons who attended the meeting and S/Shri Tej Ram, Manohar Lal, Thakur Singh and a few others distributed these posters.

He apprised the petitioner regarding the reading out and the distribution of the posters on 2-3-1985.

He admits that he was a covering candidate for the petitioner and is the President of the B. J. P. He wanted to file a complaint with the officers on 3-3-1985 and had gone to Kullu, but was not permitted to meet the officers due to the scheduled visit of the Prime Minister. No complaint was filed by him on 7-3-1985 for the reason that the same would have been treated as a delayed complaint.

This witness is a highly interested witness and it is difficult to believe his oral statement. Even if the officers were busy due to Prime Minister's visit, still a written complaint could be filed or a telegram could be sent to the Election Commissioner or other authorities.

Shri Kishan Singh (PW 8) states that he attended the public meeting of the Congress (I) at Banjar on 28-2-1985, which was presided over by Shri Virbhadra Singh, Chief Minister. The poems mentioned in Ex. P-16 and P-17 were read out in this meeting by Shri Tej Ram in presence

of respondent No. 1 and thereafter the posters were distributed by S/Shri Tej Ram, Manohar Lal and Chander Balabh amongst the people who had come to attend the meeting. The language used poem shows that Devta Shringa Rishi was not happy with the petitioner and had given his blessings to respondent No.1.

This witness was a counting agent of the petitioner and is a B. J. P. supporter. He met the petitioner on 2-3-1985 when there was a rally of B.J.P. in Kullu and apprised the petitioner about the publication and distribution of the posters. He is a highly interested in the petitioner but he never made any complaint regarding reciting of poems in the meeting.

Subedar Piara Singh (PW 16) an election agent of the petitioner, states that he attended the public meeting dated 28-2-1985 at Banjar. The posters Ex. P-16 and P-17 were distributed and the poems were read out in the meeting. He is the President of the B.J.P. and is also interested in the petitioner. He admit having not made a written complaint about the distribution of the posters to the authorities but states that he made an oral complaint to Shri Bhatnagar, Deputy Commissioner. If he could make an oral complaint to the Deputy Commissioner, then it was not difficult for him to make a similar complaint in writing to the Election Commission as well as the various other authorities. It cannot be expected that he would keep mum inspite of the fact that the posters were also given to him in the course of distribution.

Dhian Singh (PW 27), Man Singh (PW 37), Ses Ram (PW 38), Shiv Ram (PW 39) and Paras Ram (PW 40) also state that in the public meeting dated 28-2-1985 arranged by the Congress (I) party, poems mentioned in posters Ex. P-16 and P-18 were read out by Thakur Tej Ram in the presence of respondent No. 1, and such like posters were distributed to various persons. Dhian Singh (PW 27) states that Shri Virbhadra Singh, Chief Minister, attended the public meeting for about 15/20 minutes only in which he spoke for about 10/15 minutes but he does not know if respondent No. 1 accompanied the Chief Minister.

There is oral evidence regarding the reciting of the poems printed in the posters Ex. P-16 and P-17 at the Banjar meeting and also regarding the distribution of the same to the public. If the recitation of the poems of the posters P-16 to P-18 had reflected adversely upon the petitioner then the petitioner, his election agents and the supporters would have approached the higher authorities, but it was not done.

Regarding the distribution of the posters Ex. P-16 to P-18 at Jari and other places between 28-2-1985 to 5-3-1985, there is the oral evidence of Dharam Chand (PW 9), Bal Krishan (PW 12), Lal Chand (PW 10), Kishan Dass (PW 15), Om Parkash Kayastha (PW 19), Budhi Singh (PW 28), Bhag Singh (PW 30), Pritam Singh (PW 31), Jaishi Ram (PW 32), Chet Ram (PW 33), Chet Ram (PW 34), Tape Ram (PW 35) and Sabja Ram (PW 36). No written complaint was, however, filed by the petitioner, his election agent or the supporters Thus it is doubtful if the distribution of the posters and the reading out of the poems was done in the manner as has been alleged by the petitioner.

Even if it is proved that the posters of the type of Ex P-16 to P-18 were distributed, still the question remains as to whether the printing/publication or distribution of these posters is a corrupt practice under section 123 of the Act. The translations of the posters Ex. P-16 and P-17 are Ex. P-16/A and P-17/A and the same are reproduced as under:—

Ex P-16 A

"Parkash is our beloved leader, will uplift the area on every stage, will high-light the problems of the country Will speak in the Vidhan Sabha with such a force that every

leader of opposition will be afraid of him.
Will listen to the problems of the youth and have them solved, will show right path to the misled youth,
Will succeed by thousands of votes would teach such a lesson that the opposition candidate will never stand again.
Candidate is a good hearted, speaks the truth will show it to the people/will prove in the public.
Will win the hearts of the people and show it to the world. With new thinking the young leader will do tremendous work. With the blessings of the maternal uncle shall become a Minister.

2

Those who live in the palace are well known to us they are black hearted and cannot understand the sufferings of the masses.
Beware if you vote for Meheshwar this time, you will have to account for this mistake before God.

3

He stays outside the Banjar constituency in the palace at Kullu request for votes by making false promises and misleading the pepole.

4

Kullu Maharaja is a strong hold of Congress and with this Rupi Seraj has also joined.
Everybody is praising Parkash, body wants Raja of Kullu. What are you thinking now, we would not keep Raja of Kullu.
The Raja stays in the palace, how can he listen to your sufferings Sat Parkash is king of heart, he will not do anything wrong.
Be happy and rejoice and throw away the Raja of Kullu.

TEJ RAM THAKUR,
Banjar"

"Ex. P-17/A

TAZA KHABAR

I have heard this news at Banjar,
that Seraj is our Crown.
The votes have taken such a swing.
That they are all in favour of Congress
This has created problems in the house of Raja
Who is suffering from severe stomach-ache
When he prayed at Ragi-Bihar
The Deity has also predicted darkness in
his success.

That Rupi Seraj is all with us,
I have heard in the hills of Khokhan
Everybody said that Parkash is our man
Have also heard in the hills of Maharaja
Parkash is our beloved.
It is a wonder
That Parkash has become every body's favourit.
Our dream has been fulfilled
That Parkash has become every body's beloved
Fifth of March is an auspicious day
All must put the stamp on the hand."

In Ex.P-16, the learned counsel for the petitioner laid great stress upon the lines which have been underlined, that is, "Beware if you vote for Chegwar this time, you will have to account for this mistake before God." In Ex. P-16 the exact language is:

"खबरदार जो वक्त तुमने वोट दिया बहेगर को
इस गलती का हिसाब देना पड़ेगा परमेश्वर को।"

It was contended that the respondent and his supporters have given the cats to the electors, voters that voting in favour of the petitioner, would amount to the incurring of the displeasure of God, that is, Devta Shringa Rishi. This was a direct interference with the free exercise of electroal right and also an indirect interference with the exercise of free electoral rights on the part of respondent No. 1, his election agents and supporters with the consent of the respondent No. 1 and his election agent.

Clauses (*i*) and (*ii*) of section 123(2) (*a*) specifically mention that there should be no inducement or attempt to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure. Any such inducement or attempt to induce would amount to corrupt practice.

The evidence proves that the electors/voters of the constituency are illiterate and simple persons who believe in Devtas. Every village has his own Devta but Devta Shringa Rishi is the head of all the Devtas and nobody can displease Devta Shringa Rishi. It is also in evidence that the petitioner had gone to the deity Shringa Rishi but the deity Shringa Rishi had seen darkness in petitioner's future.

Now, in the poster, Ex P-16 the electors/voters were asked not to vote for the petitioner and for voting in favour of the petitioner, the voters would be accountable to God. There is in fact no indication suggestion or inducement in the poster Ex. P-16 that the elector/voter would be rendered an object of divine displeasure or spiritual censure in case of voting in favour of the petitioner.

The poster Ex P-16 is allegedly published by Thakur Taj Ram of Banjar, but it is in the evidence that the deity speaks through a Gur (that is, a Chela) as is stated by Chet Ram (PW 4) who states that only Chelas (Gur) can speak on behalf of the deity. The petitioner also admits in para 26 of the petition that the pamphlets were delivered to the innocent voters of Banjar constituency by respondent No. 1, his agents/workers and other acting with his consent and especially to persons who are known as Deulu in the local dialect, that is, special followers of village gods and goddesses and are simple illiterate village folks who have deep faith in what the Devta says through their 'Gur' (the person who speaks for the Devta). Thus a simple appeal to the elector that he she should not vote in favour of the petitioner and in case of such voting in favour of the petitioner, he she would be accountable to the God for the mistake, is not sufficient to prove that the electors were induced or attempt was made to induce the electors to believe that he or any person in whom the elector is interested would become or would be rendered an object of divine displeasure or spiritual censure.

In 12 E.L.R. 378 (*Radha Krishna Shukla and another vs. Tara Chand Maheshwar and others*), an election was challenged on various grounds and one of the grounds was that a slogan was shouted in the following words:

"Jo vote deho jhopariya man.

to joota parihen khopariya man"

It was observed by the Election Tribunal that shouting of such a slogan could not have any intention of shoe beating any one or causing any personal injury to the voters who did not support the respondent. The slogan was simply shouted because it contained a catching phrase and the 'Jhopariya' rhymed with the word 'Khopariya.' This slogan was not meant to be taken literally and nobody could have taken it seriously.

It appears that in Ex. P-16, to complete the rhyme the word Parmeshwar was mentioned because the name of the petitioner happened to be Meheshwar and the appeal only was that the elector should vote in favour of respondent No. 1 who was a better candidate than the petitioner. The virtues of respondent No. 1 have in fact been mentioned in Ex. P-16.

In Ex. P-17, great stress was laid upon the underlined portions, which reads as follows

"परज केरी धब बाणो विहारा
देऊए भी हेर तेरे धीरे निहारा।"

> that is, when the petitioner offered prayers to the deity then the deity saw darkness in petitioners future. Evidence has been produced to prove that the petitioner went to the deity but the deity predicted that there was no brightness in the future of the petitioner or the chances of the petitioner's winning were dark. In the poster Ex. P-17 there is no reference to any devta or Shringa Rishi. The poster only suggests that the petitioner went to the deity to offer prayers and get blessings of the deity but the deity saw darkness for the petitioner. This is again not an inducement or attempt to induce which can make a voter an object of divine displeasure or spiritual censure. There is no appeal giving any threats or inducement to the voter and there is no appeal in the name of any religion or by on behalf of religious leader to the voters.

The petitioner in this petition has alleged that the posters were distributed by S/Shri Chander Balabh, Manohar Lal, Thakur Singh and Chet Ram on 28-2-1985 in the Banjar meeting. Thakur Singh, Chander Balabh and Manohar Lal were the counting agents of respondent No. 1 as is proved from Ex. P-8/A, P-8 B and P-8/C. Manohar Lal (RW 5) and Chander Balabh (RW 7) state that the poems mentioned in the posters Ex. P-16 to P-18 were not recited in the meeting dated 28-2-1985 at Banjar by Thakur Tej Ram. Manohar Lal is a General Secretary of Congress (I) and was present in the meeting dated 28-2-1985. Chander Balabh (PW 7) also states that he attended the meeting dated 28-2-1985 at Banjar but the poems mentioned in Ex. P-16 to P-18 were not recited in the meeting by Thakur Tej Ram. He is also the General Secretary of the Congress (I) Banjar constituency. Thus it is not proved that the poems of the posters Ex. P-16 to P-18 were recited in the meeting by Thakur Tej Ram. Thakur Tej Ram has not been produced by either party.

The learned counsel for the petitioner placed reliance upon AIR 1959 S.C. 855 (*Ram Dial vs. Sant Lal and others*) and AIR 1969 S.C. 734 (*Manubhai vs. Popatlal*).

In Ram Dial (supra), the election of Ram Dial was challenged by Sant Lal on various grounds including the ground of corrupt practice of undue influence by interfering directly or indirectly with the free exercise of electoral rights of the electors of the constituency and it was alleged that Satguru Maharaj Pratap Singh of Jiwan Nagar, the religious head of Namdhari sect of the Sikhs had issued Farmans to his followers that the followers who would not vote for Ram Dial would not

suffer only in this world, but in the next also. It was alleged that while conveying the Farman, the followers were threatened with expulsion from the sect if they went against the wishes of the Guru. The High Court observed as follows:

> "The language of the mandate and the general background and circumstances of this case including the obvious consciousness of Maharaj Pratap Singh and Ram Dial of the probable and likely effect of such commands on the illiterate, ignorant and credulous followers of the Maharaj can lead but to one conclusion that it was intended to convey to them the threat of divine displeasure and spiritual censure if they dared to disobey the farman of their supreme spiritual and religious head."

The command was in the shape of a printed document Ex. P-1 and the same was issued in the name of a religious leader. The Court further observed, that if the religious head had said that he preferred the appellant to other candidates because in his opinion he was more worthy of confidence of the elector for certain reasons, good, bad or indifferent, and addressed words to that effect to persons who were amenable to his influence, he would be within his rights and his influence however great could not be said to have been misused. However, in the case in hand the religious leader practically left no free choice to the Namdhari electors, not only by issuing the hukam or farman, as contained in Ex. P-1, but also by his speeches to the effect that they must vote for the appellant implying that disobedience of his mandate would carry divine displeasure or spiritual censure, the case is clearly brought within the purview of the second paragraph of the proviso to section 123 (2) of the Act.

This judgement is distinguishable because a mandate had been issued by a religious head giving open directions to his followers to vote for Ram Dial. The followers of the sect believed the religious head to be supreme and the mandate of such a Guru could not be disobeyed by the followers who had the belief that the displeasure of the religious head would incur a divine displeasure. As such they had no alternative but to vote for Ram Dial and could not exercise a free right of voting.

In Manubhai (supra) Shri Shambhu Maharaj, a well known speaker and lecturer on Hindu religion and a Kirtankar of repute had told the audience consisting mostly of illiterate and orthodox Hindus of rural areas, adivasis and rabaris belonging to the Scheduled Tribes and Scheduled Castes, that the Congress party was permitting the slaughter of crores of cows in India and those who vote for Congress would be partners in the sin of go-hatya. Such a speech was considered to fall within section 123 (2) of the Act. The speaker Shambhu Maharaj had in fact reminded the voters that they would be committing the sin of go-hatya and that they would be objects of divine displeasure or spiritual censure. In such circumstances, the Court held that the corrupt practice of undue influence was proved to have been committed.

In AIR 1965 SC 141 (*Kultar Singh* vs. *Mukhtiar Singh*) it is observed that while construing a document the same should be read as a whole and its purport and effect determined in a fair, objective and reasonable manner. It would be unrealistic to ignore the fact that when election meetings are held and speeches are made by candidates of opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggeration, the adoption of metaphors, and the extravagance of expression in attacking one another are all part of the game and so, when the question about the effect of speeches delivered at such meetings arises, the election meetings are not viewed in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be construed in that light. Having so observed it would be unreasonable to ignore the question as to what the effect of the speech or pamphlet would be on the mind of the ordinary voter who attends such meetings and reads or hears the speeches.

The facts were that a pamphlet Ex. P-10 was issued by the non-resident Sikh brothers living in Singapore, Malaya and South East Asia to the resident Sikhs of India. In the pamphlet it was stated that it was the duty of the Sikhs to keep high the honour of the 'Panth' and not to criticise at that time the weaknesses of the leaders of the 'Panth'. In the elections the opponents of the 'Panth' should be defeated in the same way as was done in last Gurudwara elections. Every Sikh was asked to vote in favour of Akali Dal to preserve the honour of the 'Panth' and victory of the 'Panth' would maintain the honour of the 'Panth'. It was further mentioned that by maintaining such honour they would reach the final goal, that is, Panjabi Suba.

The Supreme Court held that the poster was issued in furtherance of the election of Kultar Singh and the plain object placed before the voterswas that the Punjabi Suba could be achieved if Kultar Singh was elected which necessarily meant that Kultar Singh belonged to Akali Dal party and Akali Dal party was strong supporters of Punjabi Suba. The propriety, reasonableness or desirability of the claim for Punjabi Suba was not under consideration which was a political issue. The political parties could have *bonafide*, divergent and conflicting views on such a political issue. It was held that the word 'Panth' in the poster did not mean Sikh religion and so it was not possible to accept the view that by distributing such a poster Kultar Singh had appealed to his voters to vote for him because of his religion.

The judgment of Ram Dial (supra) again came up for consideration in AIR 1969 S C 851 (*Kanti Prasad Jayshanker Yagni* Vs. *Purshottam Dass Ranchhodass Patel and others*) and the learned Judges of the Supreme Court observed that Ram Dial judgment (supra) was distingishable because it was found that Shri Shambhu Maharaj yielded great influence amongst the voters in the constituency. But in the present case it was not proved that Jagat Guru Shankaracharaya of Puri was the religious head of the majority of the electors of the constituency or exercised great influence on them, and it cannot be held in such a case that an ordinary Hindu voter in this constituency would feel that he would be committing the sin if he disregarded the Jagat Guru.

The facts were that elections were held in the Mahsana State Assembly constituency of Gujarat in which Parshottamdass Ranchhodass was defeated and Kanti Parsad was declared election While challenging the election on various grounds including the ground of corrupt practices within the meaning of section 123 (2) and 123 (3) of the Act, it was alleged that public meetings were arranged by the appellant and his agent Shri Shambhu Maharaj at various villages and Shambhu Maharaj made a systematic appeal in his speeches to a large section of electors to vote for Kanti Parsad on the ground of religion caste and community and the electors were told that it would be an irreligious act to vote for Parshottamdass Ranchhodass a Congress candidate because the Congress allowed slaughter of cows and bullocks. The High Court held that the speeches made by Shambhu Maharaj with the consent of Kanti Prasad amounted to corrupt practice within the meaning of section 123 (2) and 123(3) of the Act. Kanti Prasad elected candidate filed an appeal in the Supreme Court where three passages of the speech of Shambhu Maharaj were objected to complained. These passages are as under in para 22 of the judgment

> "(1) I will say one fact and that is that at present the Congress is staying everywhere that nobody else will make the people happy except themselves. But I say that apart from God no other Government either Congress or Swatantra Party can make people happy. An Agriculturist may have one bigha of land (about half an acre) and he might have sown wheat but if there is heavy frost or locusts or if one bullock worth Rs. 1000 dies, Government may give him money, may give him bullock but I do not think that that man can be happy but nature can make him happy. Today in our India every day 31,000 cows are being slaughtered throughout the country. Ten to eleven lakhs of bullocks are being slaughtered during the year and in Ahmedabad town alone 10,000 bullocks are slaughtered

(2) This unworthy Congress Government has cut the nose of Hindu Society, Sant Fateh Singh, the religious preceptor of the Sikhs, fasted for 10 days; whereas Jagadguru fasted for 73 days, still this Government is not even thinking of opening negotiations. This unworthy Government accepted the contention of the Sikhs after the fast of 10 days; whereas in spite of the penance undertaken by Jagadguru by his fast of 73 days, the Government has not considered any topic in this connection. Your Jagadguru had full confidence that, except for ten crores who are the followers of the Congress, twenty to thirty crores from the Hindu Society would help him.

(3) For example, if any Maulvi from Mucca had fasted for 73 days and had given such a mandate to our Muslim brothers, then would they have voted for the Congress. That you have to consider. In the same manner, if Fateh Singh, the religious leader of Sikhs, had fasted for 73 days, would they (Sikhs) have voted for the Congress ? In the same manner if there were Parsis or Christians, then they also would vote for their religious preceptor. This is what you have to consider. The mandate of your religious preceptor is that do not cast your vote for anyone, the mandate of the Jagadguru is that let cows be slaughtered, let bullocks be slaughtered. In Gujarat State though there is ban, still bullocks are allowed to be slaughtered, the bullocks which give every individual happiness throughout the life. This Government asks for votes in the name of the bullocks (the Congress Party election symbol being a pair of bullocks with yoke on) and I am, therefore, having an experience. Do not vote for the Congress and by putting the mark of vote on the symbol of bullocks amounts to cutting the throat of a bullock by a knife symbolized by your vote. It is my mandate that you should not do this dastardly act."

The High Court did not find first two passages to constitute corrupt practice, but the third passage was held to constitute a corrupt practice on the ground that though there is no proof that Shankracharya had any religious following as such in this particular constituency, there is no mandate in writing from the Jagadguru and there is no direct address to his followers by the Jagadguru Shambhu Maharaj has clearly appealed to the Hindu voters as such not to vote for the Congress party lest they might be betraying their religious leader, particularly when he had fasted for 73 days in a cause which has some basis in the religious beliefs of the Hindus

The Supreme Court distinguished the judgment of Ram Dial (supra) and held that there is no bar to a candidate or his supporters appealing to electors not to vote for the candidate in the name of religion What section 123 (3) bars is that an appeal by a candidate or his agent or any other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, that is, the religion of the candidate

In AIR 1981 Ker 64 (*P R Francis* Vs Raghavan Pozhakadavil and others) some passages from sermons were objected to and it was alleged that utterances verbal and or written made by religious heads and priests who may, perhaps, have great influence, on their followers, were hit by section 123 (2) of the Act While discussing the scope of section 123 (2) read with section 100 (1) (b) and in the light of the observations of the Supreme Court made in the case of Ram Dial (supra) it was observed that

> Therefore as any other citizen can use his influence amongst such electors as those over whom he has influence, a man of religion is also entitled to use his influence amongst his followers over whom he has influence. However, in both cases wielding of such influence as each of them has over those within his sphere of influence will become an abuse thereof amounting to corrupt practice of undue influence within the meaning of section 123 (2) of the Act if two conditions are obtained, namely, (i) if they pass the bounds of persuasion and use compulsion of any sort of any manner including appeal to the fears of divine displeasure spiritual censure, expulsion social ostracism or excommunication and (ii) compulsion is so used with the consent of the candidate or

his election agent. Only then, that is to say, only when there is an element of compulsion and that is resorted to with the consent of the candidate or his election agent would section 100(1)(*b*) read with section 123(2) of the Act be attracted in such cases. Where the person against whom the allegation of commission of undue influence is made by an ordinary citizen or a man of religion is himself a candidate or his election agent, of course, there will arise no question of candidate or his election agent's consent for in one case he is himself a candidate and in the other he is the candidate's alter ego."

In the present case the electors/voters were never ordered by any person of repute or the deity through his Gur (Chela) to vote for respondent No. 1 and no threats were given that in case of their non-voting in favour of respondent No. 1 they would incur the displeasure of the deity.

In view of the aforesaid discussion, I hold that the language used in the poster Ex. P-16 and P-17 even if these are proved to have been published and distributed by respondent No. 1 or his election agent or with the consent of the respondent No. 1 or his election agent, would not constitute a corrupt practice.

The petitioner's counsel further contended that the distribution of old age handicapped and widows pensions to various persons was a corrupt practice. The pensions were sanctioned and distributed to various persons. Shri Nidhi Singh, Tehsil Welfare Officer had threatened the voters that in case they did not vote for respondent No. 1 then their pensions would be cancelled. This was interference with the free exercise of voting and amounted to undue influence.

The learned counsel for respondent No. 1 contended that no undue benefit of sanctioning or payment of pensions was given to any person and even if any pensions were sanctioned or paid then the same were not done with the consent of respondent No. 1.

Maheshwar Singh (PW 2) states that inspite of the directions contained in Ex. P-19 issued by the Chief Secretary, 161 widow pension cases, 72 Handicapped and old age pension cases were sanctioned vide office order Ex. P-20 and P-21 on 23-1-1985. On 16-2-1985 in a meeting convened by respondent No. 1 at Thela in Banjar constituency several widows, handicapped persons were promised the release of pension by respondent No. 1 who told the electors/voters that if the votes were not cast in his favour then he would get the pensions grants released in their favour cancelled. Shri Nidhi Singh, Tehsil Welfare Officer toured different places from 2-2-1985 to 28-2-1985 and threatened the widows and handicapped persons that in case they did not vote for respondent No. 1 then their grants and pensions would be cancelled and the money would be recovered from them. He admits that pensions grants schemes were old schemes and such applications were received earlier.

Dharam Chand (PW 9) states that Shri Nidhi Singh, Tehsil Welfare Officer visited village Chong on 11-2-1985 where he distributed letters to villagers and informed them that old age pensions had been sanctioned in their favour due to the efforts of respondent No. 1 and they should vote for respondent No. 1. He admits that respondent No. 1 was not present at that time.

Lal Chand (PW 10) states that he had seen Shri Nidhi Singh distributing papers to some persons with respect to old age widow pensions granted in their favour and telling them that the pensions were granted in their favour due to the efforts of respondent No. 1. Mehar Chand (PW 11) states that Shri Nidhi Singh Tehsil Welfare Officer visited Thela and read out the papers to the villagers regarding sanction of old age and widow pensions in their favour. The persons were informed that in case respondent No. 1 was not successful then the pensions grants sanctioned in their favour were likely to be cancelled.

The respondent No. 1 (RW 1) has denied having arranged any public meeting at Thela and [illegible] having given threats to the villagers/voters. [illegible] Nidhi Singh

was canvassing for him during the elections. Shri V.K. Bhatnagar (RW 2) states that the District Welfare Officer met him on 21-1-1985 when he joined as Deputy Commissioner Kullu and discussed the matter regarding pensions. He sanctioned the pensions in his capacity as Deputy Commissioner because budget was available and therefore, the pensions were sanctioned with effect from 1-7-1984.

It is thus proved that old age, handicapped and widows pensions were granted in favour of some persons. It is, however, not proved that the same were sanctioned at the instance of respondent No. 1 or that respondent No. 1 was in the knowledge of the same. Hence this allegation of corrupt practice is not proved. There is no evidence regarding allegations of paras 41, 45 and 48 of the petition and the learned counsel for the petitioner did not press these allegations.

In view of the above discussion, issue No. 3 is not proved and is decided against the petitioner.

Issue No. 4:

The learned counsel for the petitioner contended that respondent No. 1 got a poster (Ex. P-18) published in the name of his maternal uncle Thakur Tej Ram. The respondent No. 1 and Thakur Tej Ram knew that the statements of facts in this poster (Ex. P-18) were false. They believed the statements to be false or did not believe them to be true in relation to the personal character and conduct of the petitioner. The statements were reasonably calculated to prejudice the prospects of the petitioner's election. These posters were distributed to the electors, and publication of such posters was a corrupt practice under section 123(4) of the Act. The posters were distributed in the entire constituency by respondent No. 1 and his workers from February 28, 1985 till 5th March, 1985. The personal character and the conduct of the petitioner was attacked by alleging that the petitioner by becoming a devotee of Devta had cheated the people and had stolen goat of the people from the roads.

The learned counsel for the respondent No. 1 contended that no posters of the type of Ex. P-18 were got published by respondent No. 1 in the name of Thakur Tej Ram, who was not the maternal uncle of respondent No. 1. Such posters were never distributed by respondent No. 1 or his workers in the constituency and the alleged publication was not done with the consent or the knowledge of respondent No. 1 or his election agent. Further there was no attack/challenge to the personal character or the conduct of the petitioner in the poster Ex. P-18.

I have considered the contentions and have also perused the poster Ex.P-18 minutely.

Section 123(4) of the Act reads as follows:—

"123. *Corrupt practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) x x x x x x x x x
(2) x x x x x x x x x
(3) x x x x x x x x x

(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of the fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal of any candidate's election.

(5) x x x x x x x x x
(6) x x x x x x x x x
(7) x x x x x x x x x

In A.I.R. 1977 S.C. 208 (*M. Narayana Rao* vs. *G. Venkata Reddy*), it is held that:

> "An election is not to be lightly set aside and if there is a charge of commission of corrupt practice then the same has to be proved and established beyond doubt like a criminal charge or a quasi-criminal charge but not exactly in a manner of establishment of the guilt in a criminal prosecution giving the liberty to the accused to keep mum. The charge has to be proved on an appraisal of evidence adduced by both the sides especially by the election petitioner. It is very easy to level a charge of corrupt practice but difficult to prove, but if it is sought to be proved only and mainly by oral evidence without there being contemporaneous documents to support it, the court should be very careful in scrutinizing the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice as alleged."

A translation Einnigih of Ex. P-18 (poster) produced by the petitioner is Ex. P-18/A. Thakur Tej Ram of Banjar, author of the poster, was not produced by either party. Shri Tape Ram (PW 35) states that poster of the type of Ex. P-18 was distributed in village Saraj on 1-3-1985 and he also got such a poster. He had issued an appeal Ex. RB and Ex. P-18 is in fact, a reply to his appeal Ex. RB. Tape Ram (PW 35) is KARDAR of DEVTA LAXMI NARAIN, and States that the petitioner and his father were usually called by the villagers as 'RAJAS'.

Dharam Chand (PW 9) states that he attended a public meeting at Jari on 28-2-1985. This meeting was also attended by the Chief Minister Shri Virbhadra Singh and respondent No. 1. The poems printed in the posters were read out in this meeting. The gist of one of the poems was that the petitioner was a Bakra Chor (goat theif). This witness is illiterate.

Bhag Singh (PW 30) states that posters of the type of Ex. P-18 were distributed and the villagers/voters were informed that the petitioner was a Bakra Chor (thief of goats). The posters were distributed in village Hurla by S/Shri Mohar Singh, Dilip Singh and Gola Ram. He disclosed to the petitioner after about 15-18 days of the election date that the aforesaid persons were propogating against him and were distributing the posters.

Pritam Singh (PW 31) only states that the villagers of Phati Rela were informed by S/Shri Kishori Lal, Sher Singh, Bihari Lal and Beli Ram on 1-3-1985 that the petitioner was a Bakra Chor (thief of goats).

Rupinder Singh (PW 7) states that in the election meeting held on 28-2-1985 at Banjar, the poem printed in Ex. P-18 was read out by Thakur Tej Ram, and respondent No. 1 thanked Thakur Tej Ram for reciting the poem. This witness had filed his nomination paper as a covering candidate for the petitioner and is interested in the petitioner being a President of Bhartiya Janata Party. He did not file any complaint regarding distribution of posters and states that he went to Kullu on 3-3-1985 to file a complaint but could not file the same as the officers were busy due to the election tour of the Prime Minister. He did not file any complaint even on 7-3-1985 or earlier for the reason that he and other party workers of the petitioner were over-confident of the success of the petitioner.

The petitioner (PW 2) also states that posters of the type of Ex. P-18 were distributed, but the same were not distributed in his presence. He did not make any complaint regarding publication of the posters to the authorities even after the date when he came to know that such posters had been printed and were being distributed. He did not mention the source of his information with respect to the distribution of the posters.

Shri Anirudh Sharma (PW 18), owner of Progressive Printing Press, Kullu, states that the poster Ex. P-18 was not printed in his press.

From the evidence discussed above, the press in which the poster Ex. P-18 was printed/published, is not proved. Thakur Tej Ram, the alleged author of the poster Ex. P-18 has also not been produced by either party, and there is also no evidence to prove that the poster Ex. P-18 was printed at the instance of respondent No. 1 or with his consent or to his knowledge. Some evidence regarding distribution of the posters of the type of Ex. P-18 in the constituency is available but it is not proved that these posters were distributed with the consent of respondent No. 1 or his election agent, or to the knowledge of respondent No. 1 or his election agent. Respondent No. 1 (RW 1) states that Thakur Tej Ram is not related to him even remotely. He also states that no such posters were printed or distributed with his consent or to his knowledge and that he was never consulted by any person for publishing such like posters.

Even if it is presumed that the poster Ex. P-18 was published with the consent and to the knowledge of respondent No. 1, or his election agent, still I am of the view that such a publication by respondent No. 1 will not be covered under section 123(4) of the Act for the following reasons.

Ex. P-18 is admittedly a reply to the appeal Ex. RB published by Shri Tape Ram, Kardar of Devta (PW 35). In the appeal Ex. RB Shri Tape Ram (PW 35) has mentioned that the Congress did not give a ticket to any person of Rupi-Saraj, and the ticket was given to a person of Lagbarai, *i.e.* Kullu. The voice of poor public of Rupi Saraj was not heard by the Congress and, therefore, the Congress should be bycotted.

In Ex. P-18 Thakur Tej Ram of Banjar has condemned Shri Tape Ram for publishing Ex. RB. The translation of Ex. P-18 annexed by the petitioner is Ex. P-18/A and it reads as follows:—

"APPEAL RUPI SERAJ KA JAWAB

I have heard appeal of Tape Ram, he has gone out of his head.
Maharaja is not Badhai alone, it also consists of 3 more Phaties.
Parkash's house is at Shamshi all these Phaties are in Banjar.
Raja's Palace is in Kullu, where from he has come to Banjar.
After reading the appeal, I have come to know that Tape Ram is a 3rd grade person.
He has sung the song of Congress, but he did not even submit the application.
When the orders were received from Delhi, Parkash has been able to get the ticket.
Tape Ram did not know Parkash is the best man.
My heart has been pinched when Tape Ram caught the tail of the Raja.

By becoming Deulu, has cheated the people has stolen the goats belonging to people from the roads. Now the Raja will be defeated and will hardly be able to save his security. Little respect enjoyed in Rote and Sachani that will also go now.

Tej Ram has spoken the truth, Tape Ram should not mind.

—Thakur Tej Ram Banjar.".

(Emphasis supplied).

The relevant portion, upon which stress was laid by the counsel for the petitioner, is underlined by me. Shri Tape Ram who admittedly is Kardar (Manager) of Devta is to be treated as a Deulu (Devotee of Devta). In the context of the appeal Ex. RB (published by Shri Tape Ram) it can only be said that Thakur Tej Ram in his reply Ex. P-18 has stated that Tape Ram had cheated the people and had stolen goats belonging to people from the roads. The attack in fact is on Shri Tape Ram and the word 'Deulu' can only refer to Shri Tape Ram whose actions in issuing the appeal Ex. RB were not appreciated by Thakur Tej Ram. By no stretch of imagination the word 'Deulu' used in Ex. P-18 can have reference to the petitioner, who, according to the statement of

Shri Tape Ram, is called a 'Raja'. In fact there is no attack on the personal conduct or character of the petitioner in Ex. P-18/A where only reference to the petitioner is that the Palace of the petitioner is in Kullu and how can he come to Banjar to contest the elections. The next reference to the petitioner is in terms that the petitioner would be defeated and would hardly be able to save his security. In both the places the petitioner has been referred as 'Raja'. If the petitioner was to be referred as 'Deulu', then he should have been referred as 'Deulu' in these two verses also. Similarly, if the character or conduct of the petitioner was to be attacked then instead of using the word 'Deulu' in the underlined portion, the word 'Raja' should have been used.

As a result of the above discussion, I hold that the petitioner has failed to prove this issue and the same is decided against the petitioner.

Issue No. 5:

The learned counsel for the petitioner contended that respondent No. 1, his workers and agents at the instance and with the consent of respondent No. 1 hired and procured four vehicles (three cars Nos. HPY 479, HPY 570, PBN 6857 and one jeep HPU 276) on 5-3-1985 for free conveyance of the electors/voters of the constituency from their villages to the place of polling and back. Such acts on the part of respondent No. 1 was a corrupt practice under section 123(5) of the Act.

The learned counsel for respondent No. 1 contended that no vehicles were used by respondent No. 1, his election agents, workers or agents on 5-3-1985 and the allegations of the petitioner were false and baseless.

Section 123(5) of the Act reads as follows:—

"123. *Corrupt practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) x x x x x x x x x

(2) x x x x x x x x x

(3) x x x x x x x x x

(4) x x x x x x x x x

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression 'vehicle' means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) x x x x x x x x x

(7) x x x x x x x x x".

Regarding use of vehicle HPY 479 (car) the petitioner's counsel relied upon the statements of petitioner (PW 2), Kishan Dass (PW 15), Saran Dass (PW 20), Bhagat Singh Negi (PW 21), Mehar Chand (PW 22), Ram Saran (PW 23) and Poshu Ram (PW 24). Raju was allegedly the driver of this vehicle, but this driver admittedly died after the filing of the petition as is stated by petitioner (PW 2) and Kishan Dass (PW 15).

Petitioner (PW 2) states that when he inspected polling station Pildi between 8.30 to 9.30 A.M. on 5-3-1985, he found that a taxi HPY-479 was carrying voters to the polling station. One Goverdhan, a Congress (I) worker was sitting in this taxi and respondent No. 1 was thanking the voters and pursuading them to vote for him. Devi Singh, Saran Dass, Mehar Chand informed him about the names of the voters carried in the aforesaid taxi and Raju driver informed him that respondent No. 1 had paid him (Raju) for carrying the voters and Goverdhan, a Congress (I) worker who was a voter at Pildi polling station, was working for respondent No. 1. Kishan Dass (PW 15) driver of the petitioner, states that five voters with Goverdhan a Congress (I) worker were sitting in this taxi on 5-3-1985.

Saran Dass (PW 20) states that while coming to his house after casting his vote at Pildi polling station he met a taxi in which some voters were being carried and Goverdhan a Congress (I) worker was sitting in the front seat of the taxi. He saw Ram Saran, his wife, Pushu Ram and 2/3 other persons in this taxi but had no talk with any person.

Bhagat Singh Negi (PW 21) polling agent of the petitioner states that he saw Pushu Ram, Ram Saran, his wife Kundi Devi etc. voters coming in taxi HPY 479 and Pushu Ram told him that taxi was sent to carry them to the polling station by respondent No. 1. He saw the taxi carrying the voters for the whole day, but he did not make any complaint to the Presiding Officer.

Mehar Chand (PW 22) states that Kamla Devi, a voter, told him that respondent No. 1 had sent a taxi to fetch him for voting at Pildi polling station. He did not see the petitioner or respondent No. 1 travelling in the vehicle on 5-3-1985.

Ram Saran (PW 23) states that he along with his wife boarded the taxi on the asking of Goverdhan and went to polling station Pildi in the taxi. Pushu Ram (PW 24) also states that he along with others boarded the taxi which was sent to carry them to the polling station.

Respondent No. 1 admits having visited polling station Pildi on 5-3-1985 but denied the hiring of any taxi. He also denied that Goverdhan was a Congress (I) worker or that he was sitting in any taxi. He also denied that any taxi was hired or procured by him for carrying the voters to the polling station or back, and states that Gogi was earlier the driver of taxi HPY 479 and Raju was never its driver.

The oral evidence produced by the petitioner is not sufficient to prove that taxi HPY 479 was hired or procured by respondent No. 1 to carry the voters to the polling station or back. Goverdhan the alleged Congress (I) worker was present in Court and was sought to be produced by respondent No. 1 but he was not allowed to be examined on the objection of the petitioner's counsel. The petitioner's evidence does not establish that any taxi was hired or procured by the petitioner for carrying the voters free of charge and there is no proof that free conveyance was given to the voters at the request of respondent No. 1 with his consent or to his knowledge. It was the duty of the petitioner, his election agents or supporters to complain to the authorities if any taxi HPY 479 had been hired or procured by respondent No. 1 to carry the voters free of charge, but it was never done. The petitioner did not produce any documentary evidence, e.g., regarding purchase of petrol/diesel for the vehicle or payment of hiring charges, etc.

The second vehicle alleged to have been used on 5-3-1985 for free carriage of the voters to the polling station and back is car HPY 570. The petitioner (PW 2) states that taxi HPY 570 carried voters of respondent No. 1 to polling station Jibbi on 5-3-1985. One Taranjit was its driver and Chander Balbh Congress worker was sitting in it.

Subedar Piara Singh (PW 16), an election agent of the petitioner also states that voters of village Ghiagi were asked to sit in this taxi and take a free lift upto the polling station.

Dula Ram (PW 25) states that his wife informed him that she had gone to the polling station in the car which was sent by respondent No. 1: Dhani Ram (PW 26) also states that he saw voters being carried in the vehicle.

Respondent No. 1 (RW 1) has denied the allegations and states that no taxi was arranged by him for carring the voters.

A complaint was filed by Piara Singh (PW 16) on which a wireless message (Ex. P-13) was sent to make the enquiries. The S.H.O., after enquiry found that the vehicle was standing at the bus stand as is stated by Tehal Singh (PW 42). Piara Singh (PW 16) also admits that upon his complaint the police brought the vehicle. Respondent No. 1 (RW 1) admits the use of the car HPY 570 till 3-3-1985 and the expenses for this vehicle are shown in the return Ex. R.C. Mast Ram S.H.O., (RW 4) admits that he made enquiries, but the taxi was found standing at the bus stand. Chander Balbh (RW 7) also denies the use of any taxi. The allegations regarding the hiring or procuring of taxi by respondent No. 1, his election agents or his workers and supporters on 5-3-1985 are thus not proved.

Regarding Car PBN 6857 the evidence is only of the petitioner (PW 2) himself, but respondent No. 1 has denied the use of any such vehicle on 5-3-1985 for free conveyance of the voters. This allegation is thus not proved.

Regarding jeep HPU 276, the evidence is of the petitioner (PW 2) himself and Mehar Chand (PW 13). Mehar Chand only states that some voters came in the jeep. He was a polling agent of the petitioner. Respondent No. 1 has denied the user of jeep on 5-3-1985 for free conveyance of voters. This allegation is not proved.

In A.I.R. 1985 S. C. 89, *Surinder Singh* vs. *Hardial Singh and others*, after considering the various judgments, it has been observed in para 23 as follows:

> "It is thus clear beyond any doubt that for over 20 years the position has been uniformly accepted that charges of corrupt practice are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in criminal trials. We are bound by the decision of the larger Bench in Mohan Singh's case (AIR. 1964 S.C. 1366) (supra) as also by decisions of co-ordinate benches and do not feel inclined to take a different view".

In (1986) 2 S.C.C. 121, (*Ram Chand Bhatia* vs. *Shri Hardyal*), it is again observed in para 25 of the judgment that:

> "Election proceedings involving charge of corrupt practice are of quasi-criminal nature and it was for the election petitioner to prove beyond reasonable doubt all the necessary facts which would establish the allegation of corrupt practices that have been alleged in the election petition. It will be unsafe to accept the oral evidence on its face value without seeking for assurance from some other circumstances or unimpeachable document".

In A.I.R. 1975 S.C. 290 (*Rahim Khan* vs. *Khurshid Ahmed*) it is held in para 9 as follows:

> "However, we have to remember another factor. An election once held is not to be treated in a lighthearted manner and defeated candidates or disgruntled electors should not get way with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts

naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature where in strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded".

In view of the evidence discussed above, I find that the petitioner has not been able to prove that respondent No. 1 hired or procured any vehicle on 5-3-1985 for free conveyance of the voters/electors to the polling station and back and, therefore, issue No. 5 is decided against the petitioner.

Issue No. 6:

The learned counsel for the petitioner did not press this issue and frankly and rightly conceded that there was no evidence to prove this issue.

After going through the evidence, I find that the petitioner has failed to prove that respondent No. 1 has committed any corrupt practice under section 123(7) of the Act. This issue is accordingly decided against the petitioner.

Issue No. 7:

In view of my finding on issue nos. 1 to 6, the present issue is decided against the petitioner.

Issue No. 8:

As a result of the findings on various issues, the present election petition is dismissed, but in the circumstances of the case I leave the parties to bear their own costs. It is directed that the substance of this decision be communicated to the Election Commission and the Speaker of Himachal Pradesh State Legislative Assembly forthwith. An authenticated copy of the decision be also sent to the Election Commission at the earliest.

Sd/-

May 8, 1986. (V. P. GUPTA), J.

Attested

Sd/-

Superintendent (Judicial),
H. P. High Court Shimla-I.

ELECTION PETITION NO. 6 OF 1985

Date of decision 16-8-1985.

Maheshwar Singh *Versus*: Satya Parkash Thakur & others

Coram

The Hon'ble Mr. Justice V. P. Gupta, *J.*
The Hon'ble Mr. Justice
The Hon'ble Mr. Justice

Whether approved for reporting; No

For the Appellant(s)/Petitioner(s) Shri M. G. Chitkara, Advocate.
the respondents(s) Shri Chhabi Dass for respondent No. 1.
Shri R. K. Gautam for respondent No. 2.

V. P. GUPTA, J.

The petitioner has challenged the election of respondent No. 1 to the 57-Banjar Assembly Constituency of the Himachal Pradesh Vidhan Sabha. The elections in the constituency were held on 5-3-1985 and the results were declared on 7-3-1985.

In the election petition the petitioner has challenged the election of respondent No. 1 on various allegations as have been enumerated in the petition. The respondent No. 1 has denied these allegations and contests the election petition. The respondent No. 1 has also raised preliminary objections to the effect that the election petition does not contain concies statement of material facts constituting either the violation of the rules or the Act or of committing corrupt practices and has not set forth full particulars of the corrupt practices. It is also alleged that the petition does not disclose a complete cause of action. On these objections, the following preliminary issues were framed on 7-6-1985:—

1. Whether the petition does not contain a concise statement of the material facts constituting either the violation of the rules or the Act or of committing corrupt practices as alleged in para 1 of the preliminary objections? If so with what effect. OPR-1.
2. Whether the petitioner has not set forth full particulars of corrupt practices as alleged in para 1 of the preliminary objections? If so with what effect? OPR-1.
3. Whether the petition does not disclose a complete cause of action as alleged in para 2 of the preliminary objections ? If so with what effect? OPR-1.

I have heard the learned counsel for the parties.

Issue Nos. 1 and 3:

Both these issues can be decided together. The only ground urged by the learned counsel for the respondent No. 1 is that the petitioner has not stated that Shri Nidhi Singh, Tehsil Welfare Officer, was one of the persons mentioned in clauses (*a*) to (*g*) of section 123 (7) of the Representation of People Act, 1951.

In the petition it is stated that Shri Nidhi Singh was earlier posted as a clerk in the District Welfare Office, Kullu and was promoted to the post of Tehsil Welfare Officer with effect from 25-5-1981. As the designation of Shri Nidhi Singh as a Tehsil Welfare Officer is mentioned, therefore, for the purposes of the present petition, it is sufficient and it can easily be determined as to whether a Tehsil Welfare Officer falls within any of the classes enumerated in clauses (*a*) to (*g*) of section 123(7) of the Act. In these circumstances, I am of the view that a concise statement of the material facts is narrated in the petition and the objection of the learned counsel for respondent No. 1 is not tenable.

Regarding other objections, the learned counsel for respondent No. 1 frankly admits that the petitioner has given the concise statement of the material facts to make out a complete cause of action. He, however, states that at the time of the production of evidence, he will be objecting to the evidence which may otherwise be inadmissible being beyond the pleadings. This contention of the learned counsel is correct and the parties cannot be allowed to lead any evidence beyond the pleadings.

In view of the aforesaid position, issues nos. 1 and 3 are decided against respondent No. 1.

Issue No. 2:

The learned counsel for respondent No. 1 does not press this issue and only contends that the petitioner will not be allowed to lead any evidence beyond the pleadings. As the learned counsel for respondent No. 1 does not press this issue, therefore, the same is decided against respondent No. 1.

Sd/-
(V. P. Gupta), J.

August 16, 1985 (K).

Attested:
Sd/-
Superintendent (Judicial)
H.P. High Court, Shimla-1.

Whether reporters of Local Papers may be allowed to see the Judgement ? Yes.